



Department for  
Communities and  
Local Government

Gladman Developments Ltd  
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Our Ref: APP/V3120/A/13/2210891

19 February 2015

Dear Sirs

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL BY GLADMAN DEVELOPMENTS LTD - LAND OFF HIGHWORTH ROAD,  
FARINGDON, OXFORDSHIRE, SN7 7EG  
APPLICATION REF: P13/V1366/O**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Anthony Lyman BSc(Hons) DipTP MRTPI, who held a public local inquiry from 1 - 9 July 2014 into your client's appeal against the refusal of the Vale of the White Horse District Council ('the Council') to grant outline planning permission for: residential development for up to 94 dwellings, landscaping, open space, highway improvements and associated works, with all other matters reserved, in accordance with application ref: P13/V1366/O, dated 17 June 2013.
2. On 4 August 2014 the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because the appeal involves a proposal for residential development of over 10 units in an area where a qualifying body has submitted a neighbourhood plan proposal to the local planning authority.

**Inspector's recommendation and summary of the decision**

3. The Inspector recommended that the appeal be allowed and planning permission granted subject to conditions. For the reasons given below, the Secretary of State disagrees with the Inspector's recommendation, dismisses the appeal and refuses planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

**Procedural matters**

4. At the Inquiry an application for costs was made by Gladman Developments Limited against Vale of White Horse District Council. This application is the subject of a separate costs decision letter.

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## **Matters arising after the close of the inquiry**

5. As the appeal was recovered after the Inquiry the Inspector gave the appellant the opportunity to submit revised planning obligations to reflect the change in the decision taker (IR6 and 154). The Secretary of State subsequently received a Deed of Variation dated 11 November 2014 to the Planning Agreement and the Unilateral Undertaking both dated 9 July 2014.
6. On 26 November 2014 the Secretary of State wrote to the main parties who appeared at the inquiry to seek representations on the fact that the Faringdon Neighbourhood Plan Examiner's report was published on 22 October 2014. He also sought views on matters raised by Mr R Stewart on behalf of the Friends of Humpty Hill (the appeal site) in an email dated 23 October 2014. He received responses from the Vale of the White Horse District Council dated 27 November, and the appellant and Mr Stewart dated 11 December. These responses were recirculated for further comment under cover of an email dated 16 December and a further response was received from Mr Stewart dated 28 December. The Secretary of State has taken account of all these responses in his consideration of the appeal before him. As the responses to the Secretary of State's communications of 26 November and 16 December were circulated to the main inquiry parties he does not consider it necessary to summarise the responses here or attach them to this letter. Copies of the correspondence can be obtained upon request to the address at the bottom of the first page of this letter.

## **Policy considerations**

7. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan comprises the saved policies in the Vale of the White Horse Local Plan 2011 adopted in 2006. The Secretary of State considers that the Local Plan policies most relevant to this case are those identified at IR16 – 18, and that other relevant policies are set out in the Statement of Common Ground (IR19).
8. Material considerations which the Secretary of State has taken into account include the National Planning Policy Framework, March 2012 (The Framework), the associated planning practice guidance, the Community Infrastructure Levy (CIL) Regulations 2012 as amended and the Written Ministerial Statement on Neighbourhood Planning of 10 July 2014.
9. The Secretary of State notes that the Council is currently preparing a review of the Local Plan to 2031, but as the published Part 1 of this has yet to reach public examination stage and so any proposals are liable to change, he attributes little weight to the emerging Plan.
10. Another material consideration in this case is the emerging Faringdon Neighbourhood Plan, as noted above and considered at paragraphs 23 - 25 of this letter.

## **Main issues**

### *The effect of the development on the character and appearance of the area*

11. The Secretary of State has had regard to the fact that the appeal site is in open countryside within an extensive area designated as the North Vale Corallian Ridge (NVCR) on the proposal map of the Local Plan. He agrees with the Inspector's assessment at IR110-118. Policy NE7 of the Local Plan seeks to protect the NVCR by not permitting development that would harm its prevailing character and appearance

unless there is an overriding need for the development and provided all steps are taken to minimise the impact on the landscape (IR110).

12. As the Inspector notes, one of the core planning principles of the Framework requires planning to recognise the intrinsic character and beauty of the countryside. The Framework advocates that the planning system should contribute to and enhance the natural and local environment by, amongst other things, protecting and enhancing valued landscapes. Although the NVCR is not protected by any national landscape designation, the Secretary of State agrees that it is, nevertheless, a valued landscape (IR112).
13. The Secretary of State takes the view that Policy NE7 is consistent with paragraph 113 of the Framework and, for the reasons at IR113, that this policy carries considerable weight in this appeal. This reflects the specific wording of Policy NE7 and its relevance to the facts of this case, notwithstanding that this site is locally designated, in line with the hierarchy identified in NPPF para. 113.
14. For the reasons at IR114-118 the Secretary of State agrees with the Inspector that the proposed residential development across a prominent hillside would have a detrimental impact both locally and in the wider landscape and would harm the prevailing character and appearance of the NVCR. He agrees that the visual effect of the proposal would be pronounced and significant for some views, resulting in an urbanising influence on the landscape. He also agrees that, given the sloping nature of the land, it may take some time for any new landscaping along the western boundary of the site to screen the development adequately. The Secretary of State notes that the appellant placed great emphasis on the amount of landscaping that they say would be undertaken to mitigate the impact of the development, including new hedgerows and trees. However, he agrees with the Inspector that as landscaping is a reserved matter the submitted drawing can only be taken as illustrative (IR118).
15. The Secretary of State agrees with the Inspector that the proposal would be contrary to the objectives of Policies NE7 and GS2 of the Local Plan (IR119) and he places significant weight on the harm to the character and appearance of the NVCR. Further, the Secretary of State considers that the proposal conflicts with paragraph 109 of the Framework which states that the planning system should contribute to and enhance the natural and local environment by, inter alia, protecting and enhancing valued landscapes.

#### *The effect of the development on Biodiversity*

16. For the reasons at IR120-126, the Secretary of State agrees with the Inspector that the impact of the proposal on grasslands would not significantly harm local biodiversity and that some mitigation could be secured by condition. Furthermore, he agrees that any impact would be outweighed by the proposed enhancement and extension of the site's extensive hedgerows which are habitats of principal importance and would contribute positively towards local biodiversity and the conservation objectives of the relevant Conservation Target Area (IR127). Overall he gives biodiversity considerations little weight in the planning balance.

#### *Foul drainage infrastructure*

17. Turning to the issue of foul drainage infrastructure, for the reasons at IR128-136, the Secretary of State agrees with the Inspector that the imposition of a Grampian style condition (condition 16 in Annex A to this letter) would be necessary in the public interest if planning permission were to be granted. He agrees that such a condition

would be reasonable, would not impose an undue burden on the developer, would ensure that the development would accord with Policy DC9 of the Local Plan and would meet the tests set out in paragraph 206 of the Framework (IR137).

#### *The effect of the development on local amenity*

18. The Secretary of State has had regard to the position of the Friends of Humpty Hill as summarised at IR138-139, and the points they make in post inquiry representations. The Secretary of State notes the many evidence statements submitted to the Inquiry, and that the Inspector considers that these demonstrate the community use and enjoyment of the field and support the Friends' argument that the appeal site is a valued open community space. He agrees with the Inspector that the element of the field's amenity value which is enjoyed through the use of the public footpath running through the site would be significantly harmed by the proposal (IR140).
19. As the glossary to the Framework defines open space as '*all open space of public value.....which offer important opportunities for sport and recreation and can act as a visual amenity*', the Secretary of State agrees with the Inspector that the appeal site particularly satisfies this definition as a visual amenity (IR140). As the site satisfies, at least to some extent, the Framework definition of open space, the Secretary of State considers that its development would conflict with paragraph 74 of the Framework which states that existing open space should not be built on unless three specific criteria are met, none of which are engaged in this case.
20. For these reasons, the Secretary of State attaches moderate weight to harm to the amenity value of the field. In reaching this view, like the Inspector he considers that the separate application to Oxfordshire County Council to register the site as a Town Green is not a matter that should be taken into account in this decision and he has not done so. Also, for the reasons considered at paragraphs 23 - 25 below, ahead of the neighbourhood plan process running its course he has placed little weight on the proposal in the submitted Neighbourhood Plan that the site should be designated as a Local Green Space.

#### *Housing land supply*

21. The Secretary of State agrees with the Inspector's assessment at IR143-145. He agrees that the need for housing and the acknowledged lack of a five year housing land supply carries significant weight in this case (IR145).

#### *Affordable housing*

22. The Secretary of State agrees with the Inspector that the provision of 40% affordable housing in accordance with Policy H17 of the Local Plan, to be secured by condition, would be a significant benefit of the scheme (IR146).

#### *The Faringdon Neighbourhood Plan*

23. The appeal site is one of several sites identified in the submitted Faringdon Neighbourhood Plan which is proposed to be 'Local Green Space' (LGS). As the Inspector notes at IR142, Paragraph 76 of the Framework advises that, through neighbourhood plans, local communities should be able to identify for special protection green areas of particular importance to them, which would then be ruled out for new development other than in very special circumstances. The Inspector considered that proposed designation of the site attracts some weight in the determination of this appeal. However, since the Inspector prepared his report the Plan has been examined and the Examiner's report was published on 22 October

2014. The Examiner recommended several modifications to the submitted Plan, including that the LGS proposals should be deleted from it. He also recommended deletion of policy that would restrict development outside the current town boundary.

24. In their representations referred to at paragraph 6 of this letter, The Friends of Humpty Hill say that important information in support of LGS designation did not reach the Inspector. The Friends say that Faringdon Town Council has been working with the Vale of the White Horse District Council on this matter and that the Plan may be resubmitted for examination. However no details of the process and revisions to the timetable for the Plan have yet been published.
25. The Secretary of State has given consideration to the policies on neighbourhood planning in the Framework. Paragraph 183 states that neighbourhood planning gives communities direct power to develop a shared vision for their neighbourhood and deliver the sustainable development they need. Paragraph 184 states that neighbourhood planning provides a powerful set of tools for local people to ensure that they get the right types of development for their community. He attaches considerable importance to these policies. However he has also given careful consideration to paragraph 216 of the Framework. The Faringdon Neighbourhood Plan has not been put to referendum and there is at present uncertainty about the next steps, the extent of unresolved objections to the Examiner's conclusions and the degree of consistency between relevant policies and the Framework pending the outcome of the neighbourhood planning process. In view of the particular circumstances in this case, the Secretary of State places little weight on the relevant policies of the emerging Neighbourhood Plan. Given the potential for lengthy delay to the neighbourhood planning process at Faringdon, he does not consider that it would be appropriate to delay the appeal decision pending the outcome of that process.

#### *Sustainable development*

26. For the reasons given at IR147-148 in regard to social and economic matters, the Secretary of State agrees with the Inspector that the proposal would represent sustainable development in terms of the social and economic arms of sustainable development. However, in view of the harm in terms of the environmental arm of sustainability, in this case significant harm to landscape and amenity, he does not agree with the Inspector's view that the proposal would represent sustainable development overall (IR149).

#### **Conditions**

27. The Secretary of State agrees with the Inspector's reasoning and conclusions on conditions at IR150-153. He agrees with the Inspector that conditions 1 - 18 as set out in an Annex of the IR meet the tests of paragraph 206 in the Framework (IR93). However, for the reasons set out in this decision letter, he does not consider that these conditions overcome his reasons for dismissing the appeal.

#### **Section 106 Planning Obligations**

28. The Secretary of State agrees with the Inspector's assessment at IR155-163 of the Section 106 Planning Agreement. For the reasons given he agrees that all of the contributions would be CIL compliant, with the exception of the £10,000 sought by Oxfordshire County Council towards the cost of maintaining public rights of way which he agrees would not be CIL compliant ((IR162). He considers that the other contributions considered at IR155-161 and 163 would fairly and reasonably relate to

the scale of the proposal and would accord with the tests in paragraph 204 of the Framework.

29. The Secretary of State also agrees with the Inspector's assessment at IR164-173 of the Section 106 Unilateral Undertaking. For the reasons given he agrees that the contributions sought for a swimming pool, sports hall, health and fitness and outdoor tennis have not been demonstrated to be CIL compliant (IR167-169). For the reasons given he also agrees that the contributions sought for two automatic number plate recognition cameras and a new police vehicle have not been demonstrated to be CIL compliant (IR170-172).
30. For the reasons set out in this decision letter, the Secretary of State does not consider that those undertakings in the agreement and obligation that he considers are CIL compliant are sufficient to overcome his reasons for dismissing the appeal.

### **Overall balance and conclusion**

31. As the relevant housing policies in the Vale of the White Horse Local Plan are out of date, the presumption in favour of sustainable development in the Framework means that the appeal should be allowed unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole (IR174).
32. The Secretary of State agrees that the benefits of the scheme would include the provision of much needed market and affordable housing to contribute towards acknowledged substantial shortfalls, and would generate considerable economic benefits of the type arising from housing development (IR175). He gives these benefits significant weight.
33. The environmental gain through enhancement of hedgerows would outweigh the harmful impact on the existing grassland (IR127), but overall the Secretary of State gives biodiversity considerations little weight in the planning balance.
34. In view of the uncertainties identified at paragraph 25 above, the Secretary of State places little weight on the relevant policies of the emerging Neighbourhood Plan.
35. Weighing against the development, the Secretary of State ascribes significant weight to the harm to the character and appearance of a valued landscape, which bring the proposal into conflict with the objectives of Policies NE7 and GS2 of the Local Plan (IR119 and 176). For this reason he considers that the proposal conflicts with the development plan as a whole, despite him agreeing with the Inspector that little weight should be given to the conflict with the town's development boundary for the reason given at IR175. He also concludes that the harm to a locally valued landscape conflicts with paragraph 109 of the Framework.
36. The Secretary of State gives moderate weight to the harm to the amenity value of the site, which he considers is in conflict with paragraph 74 of the Framework. In reaching this view he has taken no account of the separate application to register the site as a Town Green. He agrees with the Inspector that the outcome of that application may raise a question mark over whether this development could proceed and the deliverability of the housing benefits advanced as carrying weight in favour of the scheme, but that the Town Green application is subject to a separate decision process and is not a matter that should influence this appeal decision (IR178).
37. Though the Secretary of State agrees with the Inspector that the proposal would represent sustainable development in terms of the social and economic arms of

sustainable development, in view of the harm in terms of the environmental arm of sustainability, in this case the harm to landscape and amenity, he does not agree with the Inspector's view that the proposal would represent sustainable development in Faringdon (IR175).

38. Though the benefits in this case are considerable, the Secretary of State concludes that the adverse impacts in regard to landscape and amenity, together, would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. He concludes that there are no material considerations that indicate the proposal should be determined other than in accordance with the development plan.

#### **Formal decision**

39. Accordingly, for the reasons given above, the Secretary of State disagrees with the Inspector's recommendation and hereby dismisses your client's appeal and refuses outline planning permission for: residential development for up to 94 dwellings, landscaping, open space, highway improvements and associated works, with all other matters reserved, in accordance with application ref: P13/V1366/O dated 17 June 2013.

#### **Right to challenge the decision**

40. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.

41. A copy of this letter has been sent to the Vale of the White Horse District Council. A notification e-mail or letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

*Julian Pitt*

**JULIAN PITT**

Authorised by Secretary of State to sign in that behalf

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# Report to the Secretary of State for Communities and Local Government

by Anthony Lyman BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Date: 14 October 2014

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**TOWN AND COUNTRY PLANNING ACT 1990**

**VALE OF WHITE HORSE DISTRICT COUNCIL**

**APPEAL BY**

**GLADMAN DEVELOPMENTS LIMITED**

Inquiry opened on 1 July 2014

Land off Highworth Road, Faringdon, Oxfordshire, SN7 7EG

File Ref(s): APP/V3120/A/13/2210891

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**File Ref: APP/V3120/A/13/2210891**

**Land off Highworth Road, Faringdon, Oxfordshire, SN7 7EG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Gladman Developments Limited against the decision of Vale of White Horse District Council.
- The application Ref P13/V1366/O, dated 17 June 2013, was refused by notice dated 1 October 2013.
- The development proposed is described as residential development for up to 94 dwellings, landscaping, open space, highway improvements and associated works.

**Summary of Recommendation: The appeal be allowed, and outline planning permission granted subject to conditions.**

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**Procedural Matters**

1. The Inquiry sat for six days: 1 July, 3-4 July and 7-9 July 2014. An accompanied visit to the site and some surrounding viewpoints was made on 2 July, as the Inquiry could not sit on that day. Further unaccompanied visits to the site and different viewpoints suggested by both parties were made on the 30 June 2014 and during the course of the Inquiry.
2. The appeal was recovered under section 79 and paragraph 3 of Schedule 6 of the Town and Country Planning Act 1990 for a decision by the Secretary of State for Communities and Local Government (SoS) by letter dated 4 August 2014. The reason for the recovery was because the appeal involves a proposal for residential development of over 10 units in an area where a qualifying body has submitted a neighbourhood plan proposal to the local planning authority.
3. The application was submitted in outline form with all matters other than access reserved for future determination. The Statement of Common Ground (SoCG) (*Document 4*) identifies the only two drawings on which planning permission is sought as; Location Plan - FAR/12/001 and Proposed Site Access Junction – 0343-F03 Revision B. Illustrative plans (1662-02 and 1662-01 Revision G) indicate possible future layouts, landscaping and open spaces.
4. Planning permission was refused for the following reasons:
  - 1) *The application site lies within the North Vale Corallian Ridge landscape area, and is prominent in views due to its slope up towards a ridge top. The development proposed constitutes a prominent urbanisation of this sensitive area of countryside, which will erode the setting of the town and harm the prevailing character and appearance of the landscape. Therefore, the proposal is contrary to Policies NE7 and GS1 of the adopted Vale of White Horse Local Plan 2011.*
  - 2) *From the illustrative materials submitted, and having regard to the layout, the use of three storey dwellings, and the relatively high density, the proposed scheme would result in an insensitive form of development on this edge of town location. The type and form of the built environment proposed would not be commensurate with what would be reasonably expected from a fringe-of-settlement location. Therefore, the application is considered to be contrary to policy DC1 of the adopted Vale of White Horse Local Plan 2011.*

- 3) *On the basis of the information provided, it has not been demonstrated to the satisfaction of the Local Planning Authority that the proposed development can be adequately served by the existing foul water (sewage) network. Therefore, the development is likely to lead to sewage pollution problems, to the detriment of wider public health. As such the proposal is contrary to Policies DC8 and DC9 of the adopted Vale of White Horse Local Plan 2011.*
5. The SoCG confirms that, subsequently, the Council acknowledged that the indicative proposal promotes two storey development (not three storey as referred to in reason for refusal No. 2) and that this could be controlled by a condition.
6. At the Inquiry the appellants submitted a unilateral undertaking under Section 106 of the Town and Country Planning Act 1990 (as amended) (*Document 28*) relating to the provision of affordable housing and financial contributions to Vale of White Horse District Council, Faringdon Town Council and Thames Valley Police (TVP) to mitigate the impact of the proposed development. A completed planning agreement (*Document 27*) between Oxfordshire County Council, the appellants and others was also submitted regarding contributions to, amongst other things, education, footpaths and library provision. Both documents are dated 9 July 2014. References are made in the documents to the decision of the Planning Inspector, and the obligation specifically requires the Planning Inspector to determine between alternative contributions. As the appeal was subsequently recovered by the SoS, the appellants were given the opportunity to submit revised obligations to reflect the change in the decision taker.
7. A proof of evidence by Philip Wooliscroft relating to highways and transportation matters was submitted on behalf of the appellants. However, the appellants agreed that this proof could be taken as read, and Mr Wooliscroft did not, therefore, give oral evidence at the Inquiry.
8. At the Inquiry an application for costs was made by Gladman Developments Limited against Vale of White Horse District Council. This application is the subject of a separate Report.
9. The appeal site is the subject of an application to register the land as a Town/Village Green (TVG), which was duly made before the appeal application was submitted. That application is being determined by Oxfordshire County Council and was not a matter for the Inquiry.
10. This report contains a description of the site and its surroundings; an explanation of the proposal and of relevant planning policies; details of agreed matters; the key material points made in the submissions to the Inquiry and in written representations; a review of suggested conditions and the s106 obligations; my conclusions and recommendation. Lists of appearances at the Inquiry, submitted and core documents are appended. The closing submissions on behalf of the main parties and the Rule 6(6) party known as The Friends of Humpty Hill, are included in the Inquiry documents. (*Documents 29,30 & 31*)

### **The Site and Surroundings**

11. The appeal site is a 5.6 hectare field immediately outside of the development boundary of the market town of Faringdon, as shown in the Vale of White Horse

Local Plan 2011<sup>1</sup> (the Local Plan). The field is enclosed by mature hedgerows and trees. Beyond the eastern boundary the site abuts the Orchard Hill housing development. From the southern boundary, Highworth Road, the site slopes downhill to a wooded area and the Faringdon Wet Meadow Local Wildlife Site (LWS) beyond the northern boundary. The field is said to be used as pasture and is cut for hay with the adjoining field to the west in vegetable cultivation at the time of the Inquiry. A well used public right of way runs from Highworth Road, through the eastern part of the field. It links to an unmade track leading into Canada Lane and to a public footpath through the northern wooded boundary to the open farmland beyond, in the ownership of the National Trust.

12. The site is identified in the Local Plan as within the North Vale Corallian Ridge (NVCR)<sup>2</sup>, which extends across the north side of the Vale. The appeal site also lies within the West Oxfordshire Heights, Streams, Woods, Hill and Parks Conservation Target Area (CTA).

### **The Proposal**

13. Outline planning permission is sought for up to 94 dwellings, of which 40% would be affordable, with only the access to be determined as part of the appeal. The access to the site would be from Highworth Road where approximately 20m of the roadside hedgerow would be cleared to create the road into the development. Paragraph 3 above sets out the relevant appeal plans.

### **Planning History**

14. The appeal site was the subject of a 'duly-made' objection during the preparation of the adopted Local Plan. The objector sought the allocation of the site for about 110 dwellings. The objection was considered by the Local Plan Inspector (LPI)<sup>3</sup> who concluded, amongst other things, that the site was unsustainable for development in landscape terms. The site was, therefore, excluded from the development boundary for Faringdon in the adopted plan.

### **Planning Policy**

15. The Development Plan comprises the saved policies of the Local Plan, adopted in 2006. All of the policies referred to in the reasons for refusal were saved by Direction of the Secretary of State in 2009<sup>4</sup>.
16. Chapter 7 of the Local Plan relates to the natural environment. Policy NE4 seeks to protect sites of nature conservation importance from development unless it can be demonstrated that the reason for development clearly outweighs the need to safeguard the nature conservation value of the site and that adequate compensatory habitats are provided. Policy NE7 seeks to protect the NVCR by not permitting development that would harm its prevailing character and appearance unless there is an overriding need for the development and provided all steps are taken to minimise the impact on the landscape.

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<sup>1</sup> CD 19

<sup>2</sup> See Plan at CD 19

<sup>3</sup> CD 20

<sup>4</sup> CD 21

17. Local Plan Policy GS1 provides a general strategy for guiding the location of development in the Vale. Faringdon is listed as one of the five settlements designated as Local Services Centres, where development should be concentrated. Policy GS2 relates to development in the countryside. It aims to prevent development outside the built up areas of existing settlements unless it is on land that has been identified for development in the Local Plan or is in accordance with other specific policies. The supporting text to the policy recognises that in some very limited circumstances new building will be allowed to meet the needs of local communities, for small scale extensions to existing properties and to support activities based on the land such as forestry or agriculture.
18. Chapter 4 of the Local Plan sets out policies which seek to ensure the quality of new development through good design. Policy DC1 promotes high quality, inclusive design such that the layout, scale, mass, height, detailing, materials and relationship to adjoining buildings and open spaces do not adversely affect those attributes that make a positive contribution to local character. Policy DC8 permits development only where the necessary infrastructure is in place or is proposed as part of the development. Policy DC9 seeks to protect the amenity of adjoining properties and the wider environment from, amongst other things, pollution and contamination.
19. In addition to the above policies identified in the reasons for refusal, the parties agreed in the SoCG a list of other saved policies relevant to this appeal.<sup>5</sup>
20. The Council published the Local Plan 2031 Part 1 Consultation Draft in February 2014<sup>6</sup> together with a Local Development Scheme. The Council is working towards submitting the emerging Local Plan in October 2014, holding a public examination of Part 1: 'Strategic Sites and Policies' in February 2015, with adoption, if found sound, estimated in July 2015. It is anticipated that the Local Plan 2031 Part 2 relating to detailed policies and local sites, will be submitted in late 2016 with adoption planned for 2017.
21. I have had regard to aspects of national planning policy in the National Planning Policy Framework (the Framework), including achieving sustainable development and the presumption in its favour; delivering a wide choice of high quality homes; requiring good design, and conserving and enhancing the natural environment. Relevant sections of the Planning Practice Guidance (PPG) have also been taken into account.

### **Agreed Matters**

22. The main parties agreed in the SoCG<sup>7</sup> that, at the date of the Statement, the Council could not demonstrate a deliverable 5 year supply of housing land, although the extent of the shortfall was not agreed. Having regard to paragraph 49 of the Framework, the parties agreed that, insofar as Policies GS1 and GS2 are relevant to the supply of housing, they should not be considered up-to-date. It was also agreed that paragraph 14 of the Framework is engaged and that the presumption in favour of sustainable development applies.

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<sup>5</sup> SoCG – paragraph 3.1.3

<sup>6</sup> See CD 25a, b, and c

<sup>7</sup> SoCG – paragraph 2.7.1

23. In the SoCG the following matters were also confirmed:

- The background to the appeal
- A description of the appeal site and its surroundings
- The sustainability of Faringdon as a suitable location for development
- The acceptability of the proposed access upon the highway network
- The provision of 40% on-site affordable housing
- The likely lack of impact on protected species
- A suggested list of conditions, which was amended after Inquiry discussions.

24. The SoCG also acknowledges, in accordance with the appellants' Statement of Case, that the third reason for refusal relating to foul water drainage could be dealt with by an appropriately worded condition. However, subsequently at the Inquiry, the appellants' expert witness on foul drainage matters, Mr Alex Day, argued that as all matters relating to foul drainage could be dealt with by relevant legislation governing the water and sewerage industry, a condition was not necessary or required.

### **The Case for the Appellants**

*The material points are:*

#### ***Development Proposal***

25. Outline planning permission is sought with all matters reserved save for access for a residential development of up to 94 dwellings. 40% of the dwellings would be affordable homes. The appellants are commercial developers but do not propose to develop the site. The intention is to promote the site with the benefit of planning permission. They do not seek a personal planning permission and there is nothing in the identity of the applicant that is material to the determination of the appeal.

#### ***Determination of the Application***

26. The application was determined under delegated powers by Council officers on 1 October 2013<sup>8</sup>. The reasons for refusal contended that:

- a) The development constituted a prominent urbanisation of a sensitive area of countryside and would erode the setting of the town, harming the prevailing character and appearance of the landscape;
- b) By reference to the illustrative materials provided, the development would result in an insensitive form of development at this location
- c) The development would be likely to lead to sewage pollution problems.

27. Notwithstanding the requirement on the local planning authority (LPA) to state clearly and precisely their full reasons for refusal including the specification of all

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<sup>8</sup> CD 3.2

policies and proposals in the development plan relevant to the decision, the Council through its Statement of Case introduced other issues including:

- a) Ecology;
- b) Conflict with Policy DC5, thereby introducing the issue of highways and transportation impacts of the development proposal.

### ***Development Plan***

28. The appellants acknowledged at the outset that their proposal conflicts with policies GS1, GS2 and H13 of the adopted Local Plan<sup>9</sup>. The policies of the Local Plan were saved in July 2009 with an exhortation that the Plan would be replaced promptly. Having acknowledged that the development proposal would be contrary to the provisions of the statutory development plan, the appellants consider that the weight that ought to be afforded to that conflict should be very limited by reason of "other material considerations".
29. Paragraph 215 of the Framework states that the weight to be given to policies is dependent on the degree of consistency with the Framework. In this regard the Local Plan is three years beyond the end date of the plan period. It is therefore time expired and based on out-of-date evidence and information. It was adopted six years before the Framework and incorporates Structure Plan requirements based upon earlier data. The Local Plan's housing target is 383 dwellings per annum.
30. The Local Plan did not reflect the changes in Regional Spatial Strategy or other documents. Consequently, the settlement boundaries and other policies (including Policy NE7), that had already been overtaken by the higher housing requirements in the Regional Strategy and the Structure Plan, reflected the development needs then and only up to 2011. At the Local Plan examination the LPA had told the LPI that there would be an early review of the plan. Notwithstanding the public promise, the review never happened.
31. There is no dispute that Paragraph 14 of the Framework is engaged in this case<sup>10</sup> and should be applied and given appropriate weight because, i) the Local Plan is "out-of-date" having been adopted some eight years ago with an end date of 2011, ii) the parties are agreed that there is an absence of a demonstrable five year supply of housing land. It therefore follows that policies relevant to the supply of housing cannot be regarded as up-to-date. Consequently, boundary policies and open countryside policies cannot be regarded as up-to-date, consistent with paragraph 72 of the decision of the High Court in Tetbury<sup>11</sup>
32. Consequently, Policies GS1 and GS2 (and it follows H13) should be regarded as both out-of-date and not up-to-date in accordance with the Framework. This matter has been the subject of consideration in an appeal at Abingdon, Oxfordshire within the LPA administrative area<sup>12</sup>. That Decision is dated 11 July 2013 and, in it, the Inspector stated at Paragraphs 20 and 21, - *"However, there is no dispute that, in the absence of a 5-year housing land supply, Paragraph 49*

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<sup>9</sup> See Proof of Evidence of Christopher Still, page 20.

<sup>10</sup> SoCG 4.1.1.

<sup>11</sup> CD 6.

<sup>12</sup> CD 11.

*of the Framework establishes that policies for the supply of housing (including GS1, GS2 and H13) are not up-to-date; and that therefore the final bullet-point of the Framework paragraph 14 applies. I therefore conclude that the fact that the appeal site is outside the development boundary of any settlement as shown in the LP is not of itself a consideration that weighs heavily against the appeal proposal.”* The current appeal should be determined consistent with this Decision. As a consequence, the policies in relation to the settlement boundary and “open countryside” should be given very little weight.

33. Local Plan Policy NE4 deals with sites of nature conservation importance. Applying paragraph 215 of the Framework, it is a more onerous policy than that contained at paragraph 118. Again, this was addressed in the Abingdon Decision Letter. At Page 3 the Inspector records: “*Policy NE4 is inconsistent with the Framework Paragraph 118 in that NE4 sets a more demanding threshold of harm to sites of nature conservation importance. Relatively less weight should be attributed to Policy NE4.*”
34. Policy NE7 was the subject of much debate in the course of this Public Inquiry. Together with Policies NE6 (North Wessex Downs Area of Outstanding Natural Beauty)(AONB) and NE9 (Lowland Vale), it is one of three policies that cover the whole district of the LPA. Policies NE7 and NE9 have reduced weight because they are not landscape quality designations at any level. That was clear to the LPI<sup>13</sup> who considered that national planning policy at the end of 2005/beginning of 2006 did not provide a justification for policies such as NE7 and NE9. He expected them to be rigorously reviewed<sup>14</sup>. In the Abingdon appeal (a site subject to Policy NE9) the Inspector<sup>15</sup> stated: “*The appeal site is not subject to any landscape quality designation at national, regional or local level.*”
35. “Valued” landscapes must be identified and have been assessed for that value. Paragraph 113 of the Framework clearly identifies the need to draw distinctions by reference to a hierarchy. Policy NE7 does not represent an up-to-date objective assessment of landscape value as required by paragraph 165 of the Framework. The LPA’s own Built and Natural Topic Paper<sup>16</sup> acknowledges that NE7 does not do this. The Glossary to the Local Plan does not assist as it is not part of the Local Plan and cannot make Policy NE7 something it is not.
36. Policy NE7 is thus inconsistent with the Framework because it does not identify what is of value and what is not within it. It is a designation extending over 18,400 hectares. It is a policy that reflected previous national policy that is no longer contained within the Framework. This is demonstrated by reference to Paragraph 7.21 of the Local Plan which draws upon then national planning policy stating that the countryside should be safeguarded for “its own sake” and building away from existing settlement should be “strictly controlled”. These are no longer part of the Framework and, as such, Policies GS1, GS2, NE7 and NE9 should be regarded as no longer up-to-date in the sense of reflecting such policy.
37. Furthermore, Policy NE7 is also relevant to the supply of housing because it is a blanket restriction over development (including washing over villages). As it

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<sup>13</sup> CD 20.

<sup>14</sup> CD 20 at paragraph 7.10.4 et seq.

<sup>15</sup> Paragraph 66 of CD 11.

<sup>16</sup> CD 111

operates to restrict housing (and other development) that would be otherwise acceptable, it is contrary to the Framework. The decision in Tetbury<sup>17</sup> applies with equal force to Policy NE7 as it would to open countryside policies. NE7 is very different from the policies to protect specific areas referred to in paragraph 47 of the Barwood judgement<sup>18</sup> and is a much more broad based policy.

38. In recent determinations the LPA has allowed housing in NE7 locations and the AONB. Indeed, sites are being promoted in NE7, NE9, green belt and AONB locations. In the green belt it is necessary to be able to demonstrate that there are "exceptional circumstances"<sup>19</sup>, and in an AONB, because it is afforded the "highest status of protection"<sup>20</sup>, development requires a compelling case. It is on the need for significantly greater amounts of housing that the LPA justifies emerging allocations in AONB and the green belt. The determination of recent applications demonstrates the Council's flexible application of the policy.
39. In conclusion, the policies that are relied upon by the LPA against this development can carry little weight in the determination of this appeal. It is recognised by both parties that Paragraph 14 of the Framework is engaged and therefore the threshold that the LPA case must reach is that any adverse impacts of the development would significantly and demonstrably outweigh the benefits of the development or that specific policies in the Framework indicate development should be restricted. It is accepted that the test does not override all other considerations but the decision maker should regard the test of significantly and demonstrably outweighing the benefits as a "high bar" in circumstances where national policy is to boost the supply of housing land.
40. Footnote 9 to the Framework provides a list of examples where specific policies indicate development should be restricted and these including green belt and AONB. None of the examples applies to the appeal site.
41. The proposal derives support from national policy in relation to the requirement to significantly boost the supply of housing that the country needs; the delivery of both market and affordable homes in a sustainable location and the requirement to drive and support sustainable economic development that will contribute to the vitality and viability of services and businesses in Faringdon.

### ***Housing Supply***

42. There are two aspects that need to be addressed: i) whether the Council is able to demonstrate a 5 year supply of housing land, ii) whether the extent of the shortfall is a material consideration to be given weight.
43. There is no dispute that the LPA is unable to demonstrate a 5 year supply of housing land. Therefore, paragraphs 49 and 14 of the Framework are engaged. The Council considered that it had a 4.4 year supply of land<sup>21</sup>. However, that assessment was inappropriate as it relied on the Liverpool method and the revoked Regional Strategy housing requirement. The reworked figure using the

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<sup>17</sup> CD 6.

<sup>18</sup> CD 93

<sup>19</sup> Paragraph 83 of the Framework.

<sup>20</sup> Paragraph 115 of the Framework.

<sup>21</sup> Five Year Housing Land Supply Statement (August 2013)



Sedgefield method, but still based on the same housing requirement and the Council's own assessment of land supply, is 3.1 years.

44. The appellants contend that the extent of any shortfall must be a material consideration. One cannot begin to conclude whether there is or is not a 5 year supply without calculating what the supply is, using a proper Framework compliant approach. The issue is whether the extent of need for housing is a material consideration where the LPA acknowledge they are unable to demonstrate a 5 year supply. It is incapable of argument that the extent of need for a development is an immaterial consideration. The only scope for argument relates to the question of the weight that can be given to the consideration of extent of need. It is an irrational conclusion for a decision maker to give the same weight in a determination to a materially different extent of need.
45. The appellants' approach is to utilise the Oxfordshire Strategic Housing Market Assessment (SHMA) of April 2014<sup>22</sup> which is a full objectively assessed need (OAN) for the housing market area that includes the Vale of White Horse. The annualised SHMA figure for the Vale of White Horse is 1028 dwellings per annum as a minimum. The LPA is not a constrained authority such that the objectively assessed need should not be met in full. The emerging Local Plan seeks to identify sufficient sites to meet this requirement. Current judicial authority<sup>23</sup> requires a decision maker to look to identify the OAN and to use that figure to calculate the 5 year requirement. Any consideration of whether constraints may ultimately reduce the figure is not a matter for a Section 78 appeal.
46. It is the appellants' submission that the Council's best case having regard to its claimed supply measured against the SHMA 2014 is only 2.3 years. However, having regard to the appellants' assessment of the supply against the SHMA, the supply is only 1.7 years.
47. Where it is accepted that there is an absence of a 5 year supply, and there is little difference between the parties on the estimated shortfall, there is little utility in debating matters over a couple of months supply. However, that is not to say that the extent of a supply is immaterial in the determination of an application. The Hunston Court of Appeal decision supports that proposition. The extent of the shortfall must be material in the planning balance of any decision, and not just those situations identified in footnote 9 to the Framework. The greater the need in quantitative terms, the more weight should be given to meeting that need in the planning balance. The need for residential development is a material consideration in this case, and therefore, the extent of that need must be a material consideration increasing in weight the greater the demonstration of need.
48. In this case the difference between the LPA's assessment of housing deficit at the time of the decision (471 dwellings) and the appellants' calculated shortfall of over 4900 dwellings is enormous and must carry greater weight. This is supported by the SoS in the 'Tetbury' decision.<sup>24</sup>

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<sup>22</sup> CD67

<sup>23</sup> CD 18 – Hunston, Court of Appeal paragraph 26; CD93 – Barnwell, High Court paragraphs 30-32

<sup>24</sup> CD 12.

49. The strategic housing allocations in the emerging Local Plan do not make up the shortfall, despite envisaging the release of 2000 units on sites covered by Policy NE7, the green belt and the AONB. The appeal site was not considered in the site selection process which demonstrates a flaw in the methodology used.
50. The need for affordable housing is acute and the local situation is continuing to deteriorate with a highly constrained supply of affordable units. The need for substantial increase in the number of affordable homes in the Vale is recognised. 40% of the units to be constructed would be affordable housing. This represents a major benefit to which substantial positive weight should be attached.

### ***Character and Appearance***

51. Paragraph 109 of the Framework recognises that the planning system should protect and enhance 'valued landscapes'. This implies that distinctions should be made between the hierarchy of sites, so that protection is commensurate with their status. The appeal site, together with 18,400 hectares of land within the LPA area is subject to Policy NE7 relating to the NVCR. This policy does not prevent development per se, - only development which would harm the prevailing character and appearance of the Ridge. That harm must be balanced against any overriding need and the steps taken to minimise the impact on the landscape.
52. Policy NE7 embraces a range of character types including the built form, woodland, and edge of settlement development, but does not describe the character that is to be regarded as special. It is more of an open land policy that includes areas that have less landscape merit. The LPI gave consideration to the appeal site and the land to the south of Highworth Road, which were being promoted as alternatives to the Council's preferred locations. The Inspector recognised that the northern end of the appeal site was a relatively preferable location for development, but dismissed both sites on landscape grounds. The landscape sensitivity of the two sites was confirmed by the subsequent Landscape Assessment 2008<sup>25</sup> undertaken for the Council. Hence, a consensus of informed opinion has consistently found there is no distinction in landscape terms between land north and south of Highworth Road.
53. The Kirkham 2014 Study<sup>26</sup> helped the Council to identify locations for development to meet the OAN, including the allocations currently being proposed in NE7 and in the AONB, but did not include the appeal site. This study showed the land south of Highworth Road as having medium to low capacity to accommodate development. Had the 2014 study considered the appeal site it is logical that it would have considered it in the same terms of sensitivity and capacity as the site south of Highworth Road, which is now being proposed for development in the emerging local plan.
54. There would be no harm to the prevailing character of the Ridge, although there would be limited harm to the visual amenity of a small number of local residents. The site is well contained by hedgerows compared to the proposed allocation land south of Highworth Road which will require landscape barriers to be created. Policy NE7 does permit development where an overriding need has been

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<sup>25</sup> CD 78

<sup>26</sup> CD 75a

established and mitigation applied. There is an overriding need for more houses and landscape mitigation is proposed.

55. In conclusion, the site is not a sensitive one and although it is enjoyed by local people as an amenity, it is not 'valued' in any objective assessment as required by the Framework. The site is not on the scarp slope and is seen in the context of the existing settlement from significant viewpoints. The allocation to the south of Highworth Road from the same viewpoints is at least as prominent and in many cases significantly more so.

### ***Ecology/Biodiversity including mitigation***

56. The Framework advocates the identification of a hierarchy of sites of nature conservation importance. Decision making should be commensurate with the status of the site. Some importance has been placed by the LPA on the site's location within the CTA which covers an area of 2,631 hectares.
57. It is now agreed that the grassland does not achieve the status of a priority habitat as first thought by the Council. The grassland is of local interest and results from the current agricultural management of the site. However, the site is not protected and the landowner has stated that it is not intended to manage the site for ecology/biodiversity<sup>27</sup>. One of the benefits of the scheme would be that parts of the site could be brought under control to enhance and protect local habitats which would provide links through the CTA. Further ecological benefits would include the retention and enhancement of the hedgerows (save for that cleared to create the access) which are a habitat of principal importance included in the Oxfordshire Biodiversity Action Plan. New tree planting and measures to protect bats and birds are also proposed.
58. The appellants propose either retention of the important areas of grassland in situ, or compensation by translocation to the northern boundary of the site. The case has not been made out for off-site mitigation as proposed by the LPA.

### ***Foul drainage***

59. Although initially included as a reason for refusal, the Council have proposed a Grampian style condition, preventing occupation of any dwelling until the completion of works, to ensure sufficient capacity at the existing Faringdon Sewage Treatment Works (STW) to accommodate foul water drainage from the development. There are two issues, i) whether in principle the LPA and Thames Water (TW) should impose any condition, and ii) without prejudice to the appellants' position in respect of (i) above, the form of such a condition if one is lawful, appropriate and necessary. It is the appellants' case that the imposition of such a condition is not necessary or reasonable.
60. The effects of sewerage and waste water from a proposed development on the environment or an amenity are capable of being material considerations in determining an application or appeal. However, the Water Industry Act 1991 provides a comprehensive legislative framework that ensures that new development can be effectively drained. The developer has an absolute right to connect to the public sewer under the provisions of the above Act and TW is under a duty to maintain and where necessary improve its infrastructure so as to

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<sup>27</sup> Document 14

effectively drain its area. The undertaker has a means of funding improvements through sewerage charges.

61. A negative Grampian style condition can be imposed to restrain the commencement of development until satisfactory arrangements are made to deal with the sewerage and the waste water generated by the proposal. However, for such a condition to be justified in terms of the Framework and the Guidance, it must be both necessary and reasonable. It would not be reasonable if the condition placed an unjustifiable burden on the developer.
62. The proposed condition is not reasonable. In light of the duties placed on sewerage undertakers by the Water Industry Act 1991, current deficiencies in sewerage provision would not in themselves justify a Grampian condition or a reason for refusal.
63. Furthermore, if a condition is to be imposed it should have regard to the evidence of TW that the undertaker proposes to deliver the improvements to the STW as a priority within the first two years of their new Asset Management Plan (AMP) that runs from 2015. As such, it is expected that the infrastructure will be in place by the time the development comes on stream. As a consequence of that factual scenario, the condition is not necessary and/or if a condition is necessary it need only relate to the timing of occupation of the properties.

#### ***Existing Amenity of the Site***

64. An application has been made to register the appeal site as a TVG. To that end, evidence has been provided to support that application within the context of this appeal. It seeks to establish that the site has been used for many years, as of right, for recreation consistent with the status of a TVG.
65. The application and any evidence of amenity use deployed in support of that application are not relevant considerations for the determination of the current appeal. There is a separate statutory procedure that is the responsibility of Oxfordshire County Council to determine whether the status of the land is a TVG. If it is so determined, that will have consequences for the ability to implement any planning permission. The separate and independent procedure involved in determining the status of the land is not a matter that touches upon any of the relevant issues that are necessary to the consideration of the current appeal.

#### ***Benefits***

66. There are a number of benefits that need to be placed in the planning balance in favour of the proposal. These include, i) a contribution to market housing to help meet the area's significant and severe shortfall, with the consequent human implications, ii) a significant contribution to existing affordable housing needs, that weighs heavily in favour of the scheme, iii) the development of a site in a sustainable location with associated economic, social and environmental benefits.

#### ***Conclusions***

67. The area suffers from a significant and acute shortfall in the supply of market and affordable housing. Faringdon is a sustainable location to accommodate further residential development and the appeal site is locationally sustainable adjacent to the existing settlement boundary. Little weight should be afforded to the conflict with the statutory development plan because the Local Plan is out-of-date,

material policies conflict with the Framework and because of the lack of a five year housing land supply.

68. The proposed ecological mitigation measures are appropriate and the proposed management of the site provides an opportunity to enhance the ecological interests of the site as a whole. The landscape impacts of the development would be acceptable and no worse than other sites currently being proposed as allocations within the NE7 policy area. The sites should be treated in a consistent manner and the principle of development should be as acceptable as on the proposed land to the south of Highworth Road.
69. The impacts resulting from the development of this site would not be sufficient to significantly and demonstrably outweigh the benefits.

### **The case for the Council**

*The material points are:*

#### **Introduction**

70. This appeal is concerned only with the merits of the appeal site. There is no other scheme before the Inquiry. Each case needs to be determined on its own merits and, given the landscape objection that lies at the heart of the Council's case, there is little point in the appellants highlighting other sites to support the case for the appeal site. The land south of Highworth Road does not have the benefit of permission nor has the Council formally resolved to promote the site in the Local Plan in due course.
71. There is little logic to the allegation that had the Kirkham 2014 study<sup>28</sup> looked at the appeal site, it would have recommended it as a strategic allocation. The site was too small and below the threshold to have been considered as a strategic site. It is on a north facing scarp face with a public footpath through it and is much admired from the footpath and well used vantage points including the lay-by on Highworth Road. It is cherished as a visual and functional amenity and is just the sort of land which the Framework suggests could qualify as a Local Green Space. All of these factors distinguish the appeal site from any other in and around Faringdon.
72. Moreover, it is apparent that the appellants' landscape witness misunderstood what the LPI was saying about the northern and southern parts of the appeal site. This error is compounded when you realise that those promoting the appeal site to the LPI were only promoting it for residential development on 2.75 ha of the northern and central parts, with the remaining southern section being retained for open space and access.<sup>29</sup>
73. The appellants opened their case on the basis that the proposals comply with NE7 and that the landscape impacts are no worse than the site being promoted as an allocation south of Highworth Road. It is noteworthy that in resolving to grant permission on other sites in NE7, the Council has not in fact concluded that there is compliance with Policy NE7, but rather that NE7 should be interpreted

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<sup>28</sup> CD75a

<sup>29</sup> CD20 - 8.10.16

flexibly having regard to the Framework's presumption in favour of sustainable development.

### ***Biodiversity***

74. The application was made without the benefit of pre-application discussion with the LPA, contrary to the advice in the Framework. Despite the site's planning history and the view expressed by the LPI that mitigation was unlikely ever to be effective<sup>30</sup>, the application for up to 94 dwellings was made in outline with only means of access for determination. Thus layout and landscaping are not for determination. The fact that the site lies in a CTA was completely missed at the outset by the appellants. That omission was compounded by the survey undertaken in December 2012 which was inadequate and led to an admitted error in the ecological appraisal of the site<sup>31</sup>. The appeal was made in December 2013 in the knowledge that the appellants' own later survey work suggested that parts of the site were of nature conservation interest.
75. Thus, the strategy underpinning the Design and Access Statement (DAS) was based on a false premise, namely that the grassland had no nature conservation interest. Subsequent surveys confirmed that parts of the site included semi-improved grassland albeit that due to deterioration, not a priority habitat, but in a transitional state capable of being restored. The appeal site could be improved to priority habitat via an offsetting scheme linked to other housing sites. The proposal, despite the landowner's stated intentions<sup>32</sup>, would result in a lost opportunity to restore a priority habitat within the CTA and adjacent to the LWS. Restoration would accord with Framework policy to restore priority habitats. The appellants have effectively abandoned the illustrative master plan as the extent of the cut and fill that will be required on site means that the grassland biodiversity is most unlikely to survive. In response to this, the parameters plan (also known as master plan layout Option 2)<sup>33</sup> appears to have been drawn up.
76. This new parameters plan which has not been the subject of any apparent detailed hydrological or arboricultural assessment, involves locating housing on the very part of the higher ground at the southern end which the DAS indicated on page 19, would not be built on as part of "specific mitigation proposals"<sup>34</sup>. The appellants' Landscape and Visual Impact Assessment (LVIA)<sup>35</sup> also states that the proposal seeks to mitigate the proposed impacts by respecting the views from the lay-by which would be kept open from development<sup>36</sup>. The parameters plan now seeks to introduce residential development in the very area hitherto to be kept free from it. Moreover it is on the steeply sloping parts of the site which seem to be indistinguishable from the adjoining field which the appellants' landscape witness accepted ought not to be built on.

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<sup>30</sup> CD20 - 8.10.17

<sup>31</sup> CD 1.9 paragraphs 2.2 and 3.10

<sup>32</sup> Document 14

<sup>33</sup> See Appendix 9.1 of PoE of Carl Taylor

<sup>34</sup> CD1.5 page 19 figure 13 and 3rd unnumbered bullet point in text in the right hand column of the page

<sup>35</sup> CD 1.6

<sup>36</sup> CD1.6 pages 49/50

77. To maintain the 94 dwellings, the landscape architect has been forced to compromise on the very mitigation identified and promoted through the DAS and LVIA as part of the application. In short the parameters plan begs more questions than it answers. It creates no certainty. What is proposed is the worst of all worlds and further compromises the appellants' landscape case even with the Council's suggested condition calling for an off-setting biodiversity scheme.
78. The appellants' ecology witness appears not to have appreciated that, the land proposed by the appellants for translocation of the grassland, is the same land that would be required for an on-site sewage pumping station. This was not mentioned at all until proofs of evidence and consequently there was no consideration of this in the proposed layout or the DAS. Moreover it is the same land that may need to be dug up again to create additional underground foul water storage referred to below.

### ***Waste water***

79. The Faringdon STW is operating at and, at times, over capacity. Capacity must be considered on a cumulative basis. Because the appeal scheme is not plan led, TW's ability to facilitate additional foul water is limited because of the existing capacity issues at the STW. Although TW are taking all reasonable steps to upgrade the STW at Faringdon and have included the project in the next AMP, there can be no certainty as to when the upgrade works will be completed.
80. At the outset the appellants stated that the third reason for refusal could be dealt with by a condition. Yet when the Council agreed with this in their Statement of Case, the appellants changed their position. This unexplained U turn was not foreshadowed before the exchange of evidence. The appellants argued that no condition was necessary, as they have the right to connect to the public sewer on 21 days' notice and because TW could use their statutory powers to force the developer to put in place additional measures, in the event that the upgrade works to the Faringdon STW are not complete before occupation commences.
81. The appellants have maintained this position despite having received advice from leading counsel<sup>37</sup>. That advised that the effects of sewage and waste water from a proposed development on the environment and on amenity are material planning considerations and that, in principle, it would be lawful to impose a negative Grampian style condition to restrain occupation of development until satisfactory arrangements are made to dispose of foul waste water.
82. The right to connect is not disputed. It is that matter which gives rise to the problem in Faringdon, just as it did in the Welsh Water case<sup>38</sup> where the Supreme Court stated it was the real problem. Setting aside the very obvious point that no developer would want to build and try to sell houses without adequate arrangements for the disposal of foul waste water and would recognise that the prospect of tankering or digging up more land for additional underground storage would be a promotional disaster, the appellants do not appear to consider it their problem.

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<sup>37</sup> Document 8 - Stephen Tromans QC - In the Matter of the Water Industry Act 1991

<sup>38</sup> CD 115 - Barratt Homes v Dyr Cymru Cyfyngedig (Welsh Water) [2009] UKSC 13 paragraphs 41-44.

83. The Council considers that the appellants are resisting a condition for commercial reasons which must give way to the public interest, for that is the reason for the planning system. Moreover, the appellants have identified no harm from the imposition of a condition despite their plea that the condition is unreasonable. TW have confirmed that they do not seek any financial contribution towards the improvement works, nor have the Council ever sought such sums. There is no evidence that, in the circumstances prevailing in Faringdon, the Council's condition is other than necessary, fairly and reasonably related to the development, enforceable and precise. The appellants' suggested compromise condition would not prevent occupation before the STW is upgraded and, therefore, carries the risk that pollution will occur. In the public interest a Grampian style condition is, therefore, required as there is a real risk that if occupations start before completion of the works, this will lead to pollution and damage to amenity and to the environment which is the "crucial matter"<sup>39</sup>.

### ***Character and Appearance – Policy NE7***

84. This is no ordinary landscape. It is a landscape of value with a recognised character of its own. As Framework paragraph 17 (fifth bullet point) recognises, one of the core planning principles which underpins both plan making and decision taking is taking account of the different roles and character areas .." *recognising the intrinsic character and beauty of the countryside*". This is echoed in section 11 of the Framework entitled 'Conserving and enhancing the natural environment'. The European Landscape Convention places less emphasis on special landscapes (which are generally covered by their own legal protections) and more recognition on ordinary landscapes that also have value.

85. The site lies in the NVCR which has a striking landform with a steep north facing scarp slope separating the clay vale from the Thames Valley. The NVCR is the same area of land that was previously an area of high landscape value. As the glossary of the Local Plan explains<sup>40</sup> the NVCR is a "*Locally defined area of high landscape quality where the protection of the visual qualities of the landscape is sought*". The appellants argue that the glossary was not part of the Local Plan. The Council submits that the glossary is intended to function as the definition section of the plan. Accordingly, all policies stem from the understanding of the terms set out within the Glossary. Thus it is imported within the policies of the plan by necessary implication. Just as the text to a policy is part of the development plan<sup>41</sup>, so by analogy are the appendices and glossary, in exactly the same way as the glossary at the back of the Framework.

86. The site is relatively tranquil with a rural ambience. Both of these characteristics would be totally lost if 94 homes were allowed to be built. The LPI was right to suggest this site was prominent in local viewpoints. That prominence has not diminished with the passage of time. The proposal would be an intrusive development into open countryside and would have a significant, adverse impact both locally and in a wider landscape context, changing the landscape significantly as the townscape would spill down the north face of the scarp. No

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<sup>39</sup> Document 13 - paragraph 43

<sup>40</sup> Document 11

<sup>41</sup> Document 26 -Cherkley Campaign Ltd, R (on the application of v Mole Valley District Council & Anor [2014] EWCA Civ 567 - Richards LJ at paragraphs 16-17



amount of landscaping will mitigate the impact of two-storey development on this prominent, steeply sloping site.

87. Moreover, there is a tension, between the appellants' claim to mitigate the impact of development by creating a landscape screen between the development and the surrounding landscape on the one hand, and, on the other, creating a public footpath link to the west of the site that overlooks the adjoining countryside in a bid to reproduce the experience currently enjoyed by those on the existing public footpath to the east of the site. Furthermore, self-evidently, the experience and enjoyment gained by the current users of the footpath would be significantly denuded in the new urban context.

### ***The Development Plan***

88. The appellants accept that their proposals do not accord with the development plan since they promote development beyond the edge of Faringdon. The Council accept that Policies GS1 and GS2 are relevant policies for the supply of housing and, by definition, are not to be considered up-to-date in accordance with the Framework. That is not to say that GS2 does not have some application in the context of other development. Thus only to the extent that GS2 deals with the supply of housing it is not up-to-date. This position here is the same as it was in the Tetbury<sup>42</sup> case where a policy akin to GS2 was found to be not up-to-date to the extent it was relevant to housing supply. The High Court dismissed a challenge.
89. However NE7 is quite different. Firstly, NE7 is more akin to the green wedge policy in the Davis case where Mrs Justice Lang<sup>43</sup> had no difficulty in concluding that it was not a policy for the supply of housing. Moreover, NE7 is more akin to the sort of policy Mr Justice Ouseley was referring to in the South Northamptonshire decision where he contrasted very general policies akin to GS2 with policies designed to protect specific areas<sup>44</sup>.
90. The development would be contrary to Policy NE7, as it would significantly harm the prevailing character and appearance of the NVCR which, in the main, is derived from the striking landform of the steep north-facing scarp slope of which the appeal site forms a part. To allow development to cascade down the scarp slope would not only set a most unfortunate precedent, but would significantly damage the landscape setting of Faringdon. In accordance with the Framework, Policy NE7 should be given due weight. The appellants' planning balance exercise is flawed because it fails to recognise the breach of NE7 and also fails to give that policy due weight.
91. It is agreed that little weight can be given to the emerging local plan.

### ***Housing land Supply***

92. The Council cannot demonstrate a 5 year housing land supply (HLS). However, it is not accepted that there is any overriding need for the development on this particular site. The Council accept the legitimacy of the Sedgfield approach and that the OAN identified in the SHMA 2014 is a material consideration as best

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<sup>42</sup> CD 6 - Cotswold DC v SoS C&LG and Fay & Son [2013]

<sup>43</sup> See paragraphs 6.15-6.16 in Dr Rocke's Proof of Evidence

<sup>44</sup> CD93 - paragraph 47

evidence. But full weight cannot be given to any calculation based on this requirement as it has not been tested. The PPG post-dates the Hunston<sup>45</sup> case and does not suggest that a Council should abandon assessing the HLS based upon the last tested development plan requirement.

93. Where a shortfall is accepted, it is not necessary for the decision maker to assess and identify the precise HLS calculation. All that is necessary is to establish whether the presumption does or does not apply. The Council accept that it does apply in this case. That does not mean that permission necessarily ought to be given. It is not a free for all. There is nothing in the Framework or the PPG which suggests that, once the presumption is engaged, the level of shortfall is material. The Tetbury<sup>46</sup> case was an application of Framework footnote 9 so that the presumption was not engaged and, as a major development in the AONB, paragraph 116 of the Framework applied. Hunston was also an application of footnote 9, namely the green belt where very special circumstances had to be shown in accordance with the Framework.

### ***The Planning Balance***

94. The applicant has no intention of building out the scheme and admits that the land cannot go to the market until and unless the TVG application is finally dealt with, and only then, if it is dismissed. Whilst the merits of that application are not for this Inquiry, it is material that no evidence has been submitted to gainsay the 71 statements from local people<sup>47</sup>, and accordingly there does seem some prospect that the TVG application may succeed. The appellants have not submitted any legal opinion to suggest otherwise. Thus, development may not be able to be delivered in which case the claimed benefits will not accrue. The TVG issue goes to deliverability and in this case it might also go to the question of whether this development will proceed. There must be a question mark over the deliverability of the housing benefits which are prayed in aid. The provision of much needed market and affordable housing is a benefit which is to be afforded great weight but only if the development is in fact delivered.
95. The Council does not accept that the quantified new homes bonus or the claimed sums have been shown to be relevant material local finance considerations within the meaning of PPG ID-21b-012. The appellants did not explain how these sums would make the development acceptable as per policy.
96. The proposals cannot be characterised as sustainable development because of the significantly harmful impacts on the landscape and on this cherished and very prominent site. The permanent and irreversible adverse landscape impacts arising from the proposal would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole.

### **The Case for the Rule 6 (6) Party**

*The material points are:*

97. The Friends of Humpty Hill seek to protect the amenity value of the site, known locally as Humpty Hill, which has been an amenity space for as long as anybody

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<sup>45</sup> CD18 CoA Judgement

<sup>46</sup> CD 6

<sup>47</sup> See Rule 6 Party Proof of Evidence and appendices

locally can remember. The site is used daily by walkers, to enjoy the exceptional views from Humpty Hill. The public footpath forms an important connection between Highworth and Lechdale Roads. The topography of the hill makes it a favourite for winter activities and its accessibility makes it particularly valuable. 71 statements have been submitted to support the duly made application for Town Green Status. This evidence has not been questioned by the appellants.

98. The site should be correctly described as 'playing space' and 'land in local community use' to which Local Plan Policies L1 and CF1 are relevant. These are not housing related policies and are consistent with the Framework and carry weight. Humpty Hill also satisfies the definition of 'open space' as per paragraph 54 of the Framework. Paragraphs 70 and 74 are also relevant and should restrict development with regard to paragraph 14 of the Framework. The adverse impacts in this case significantly and demonstrably outweigh the benefits. These policies and paragraphs apply regardless of the ownership of the land and/or whether the landowner granted or did not grant permission for the recreational uses.
99. The TVG application makes the site unsellable and thus undeliverable. It would be unreasonable to grant planning permission to an undeliverable site to make up a temporary housing shortfall. The site's allocation in the Neighbourhood Plan as a Local Green Space is a significant material consideration and should be given weight. The appeal should be dismissed.

### **The Cases for Interested Parties**

*The material points are:*

#### ***Faringdon Town Council***

100. The appeal site is a green open space which has never been cultivated, and has been used as a local amenity area for many years. The development is not in accordance with the draft Faringdon Neighbourhood Plan as it is outside the development boundary and is designated as a Green Space in that plan, which is to be submitted to the Vale of White Horse District Council in the next few weeks. The site is adjacent to a densely populated area of Faringdon which has no other easy access to open space. There is a deficiency of green space in Faringdon. The site has considerable landscape and amenity value and provides important views towards Faringdon from surrounding vantage points.
101. The development would result in the fragmentation of an ecological network, potential damage to local wildlife and possible harm to protected species. There are springs and an underground stream on the site. The implications of these have not been assessed, nor the impact on flooding and the LWS. Most of the town's facilities are more than the recommended 800m from the site which is not sustainable and contrary to Local Plan Policy GS10. There are few employment opportunities in the town, and most of the new residents would have to commute, increasing car movements contrary to paragraph 32 of the Framework.
102. Since 2010, approximately 1100 homes have been approved in Faringdon with a further 326 in the pipeline. The rate of population growth arising from these developments is unsustainable and will overload already over-stretched infrastructure such as schools, health care and the STW. The adverse impacts of this scheme, in this highly sensitive landscape, outweigh the benefits.

### ***Ward Councillor Roger Cox***

103. The proposed development has generated considerable objection from professional officers, organisations and numerous local residents. The key concerns are as follows: i) the scheme will have significant visual impact on the landscape setting of the area in conflict with Local Plan Policies NE7 and DC9; ii) the STW is at capacity and cannot cope with the cumulative impact of developments in Faringdon; iii) further information is needed to demonstrate that the scheme would have a neutral or positive impact on the delicate ecology of the site; iv) the inadequacy of the proposed open spaces; and v) the site fails the sequential test compared to other sites in the area which have capacity for over 1000 dwellings.

### ***The National Trust***

104. National Trust farmland extends close to the western boundary of the appeal site, and is affected by this proposal, although the scheme does not directly take National Trust land. The key points are: i) due weight must be given to the Framework's core principle regarding the intrinsic value of the countryside, as the proposal is harmful to the countryside setting of Faringdon and the NVCR contrary to Policy NE7; ii) the 2006 findings of the LPI are relevant, in particular the concerns about development spilling down the escarpment; iii) the Framework does not prohibit local landscape designations and therefore, Policy NE7 is not out-of-date, is consistent with the Framework and carries weight in the planning balance; iv) the site is visible from numerous vantage points including Badbury Hill in the ownership of the Trust and the many footpaths which cross the Trust's estates. The National Trust contends that the proposed housing would be evident from many viewpoints (albeit some are distant) and would not be concealed by topography and hedgerows. The containment of the urban area west of Faringdon follows a defensible boundary which clearly delineates between urban and rural areas. This urban edge would be pushed forward by the development and would be discordant with the remaining urban/rural division.

### **Written Representations**

*The material points are:*

105. Concerns were raised about a number of issues, including the level of the water table on the appeal site, the occurrence of water runoff and the potential adverse impact on the Wet Meadow LWS; the risk of flooding, landslip and subsidence due to the hydrostatic pressure; the risk of pollution from waste water from the development; the problems with over-stretched infrastructure in the town; the condition of the unadopted track leading to the town from the north-east corner of the site; the adverse impact on wildlife; the loss of the recreational amenity of the site; the visual impact of houses built on a steep slope and the increase in traffic congestion.

106. The local Member of Parliament, Ed Vaizey, objected to the proposed development which he considered would be a prominent urbanisation of this sensitive area of countryside; would erode the setting of the town and harm the prevailing character and appearance of the landscape. Concerns were also raised about the loss of the recreational amenity value of the site, the impact on the nearby National Trust land and the capacity of the foul water network.

107. According to the officer's report dated 30 September 2013, 39 individual letter of objection and a 27 page petition were also submitted at the application stage. The material issues raised were largely similar to those set out above.

### **Conclusions**

108. The following conclusions are based on the oral and written evidence given to the Inquiry and the visits I made to the site and its surroundings, both accompanied and unaccompanied. The numbers in square brackets refer back to earlier paragraphs in this report, where appropriate.

109. The main considerations in this case are as follows:

- 1) The effect of the proposed development on the character and appearance of the area
- 2) The effect of the development on local biodiversity
- 3) Whether foul water from the site would be satisfactorily discharged
- 4) The effect of other considerations including housing land supply and sustainability on the planning balance

### **Character and Appearance**

110. The appeal site is in open countryside within an extensive area designated as the NVCR on the proposal map of the Local Plan. The NVCR is a striking landform with a steep north facing scarp slope. The appeal site is on the slope of the scarp although in an area where the contours are more widely spaced than the steeper parts to the west. The Local Plan describes the NVCR as characterised *by woodland including ancient woodland, country houses designed to look out over the scarp, villages built of the local coral ragstone, and expansive views*. Policy NE7 of the Local Plan seeks to protect the NVCR by not permitting development that would harm its prevailing character and appearance unless there is an overriding need for the development and provided all steps are taken to minimise the impact on the landscape.

111. Policy GS2 of the Local Plan relates to development in the countryside. It aims to prevent development outside the built up areas of existing settlements unless it is on land which has been identified for development in the Local Plan or is in accordance with other specific policies. The supporting text to the policy recognises that in some very limited circumstances new building will be allowed to meet the needs of local communities, for small scale extensions to existing properties and to support activities based on the land such as forestry or agriculture.

112. One of the core planning principles of the Framework requires planning to take account of the varying roles and character of different areas and to recognise the intrinsic character and beauty of the countryside. The Framework advocates that the planning system should contribute to and enhance the natural and local environment by, amongst other things, protecting and enhancing valued landscapes. Although the NVCR is not protected by any national landscape designation it is, nevertheless, a valued landscape [85, 101].

113. I am not persuaded by the appellants' argument that Policy NE7 carries reduced weight because it is not a landscape quality designation and is

inconsistent with the Framework [35-37]. The glossary to the Local Plan describes the NVCR as a *locally designated area of high landscape quality where the protection of the visual qualities of the landscape is sought*. Although the definition in the glossary is not part of the actual policy, with reference to a Court of Appeal Judgement<sup>48</sup> submitted by the Council, it is an essential aid to the interpretation of the policy, (in the same way as the glossary to the Framework) [86]. The glossary definition also confirms that it is a 'local' designation, consistent with the hierarchy of sites advocated in paragraph 113 of the Framework. I consider that Policy NE7 is a policy which carries weight in this appeal.

114. Sites in and around Faringdon have been assessed for potential allocation for development on a number of occasions including in the LPI's report following the Inquiry held in 2005,<sup>49</sup> the Vale of White Horse Landscape Assessment (2008)<sup>50</sup> (VWHLA) and the Vale Landscape Capacity Study 2014<sup>51</sup>. The LPI considered land both to the south and to the north (the appeal site) of Highworth Road as alternatives to sites then being proposed by the Council. The proposal for the appeal site before that Inspector was for only approximately half of the site to be developed on the northern/central part of the appeal field, leaving the elevated, more prominent southern half as public open space. Nevertheless, the Inspector concluded that in landscape terms neither site on Highworth Road was a preferable alternative to the Council's proposals as, amongst other things, development on these sites would be prominent from public viewpoints, detrimental to the landscape setting of the town and that it would be difficult to mitigate the adverse visual impacts. [52-54; 73-74]
115. The VWHLA considered that the sites either side of Highworth Road had a very high level of landscape sensitivity and a very low capacity to accept change. The 2014 study re-evaluated sites and considered that the land south of Highworth Road, opposite the appeal site, had medium to low landscape capacity. The appeal site was not included in the 2014 assessment as it was too small to accommodate the specified threshold level of dwellings for a strategic site [72]. Although, there may be some logic to the appellants' claim that had it been included in the assessment, the appeal site's landscape capacity to accommodate development may have been similarly re-evaluated, I attach very little weight to this argument. This is because the land south of Highworth Road, with which the appellants seek to draw comparisons, is neither formally allocated nor has it the benefit of a planning permission at the time of writing this report. I must consider the appeal site and proposal on its own merits.
116. I viewed the site from many of the viewpoints used in the two parties' LVIAs during the course of the Inquiry. One of the most prominent views of the site is from the nearby popular lay-by on Highworth Road, complete with its vista information panels. This viewpoint affords panoramic views over the Thames valley and across the appeal site towards Faringdon and Folly Hill with its prominent iconic tower to the east of the town. This view towards Faringdon is

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<sup>48</sup> Document 26 - Cherkley Campaign Limited v Mole Valley District Council and others [2014] EWCA Civ 567

<sup>49</sup> CD 20

<sup>50</sup> CD 78

<sup>51</sup> CD 75a

highly sensitive to change and the visual effect of the proposal from this close receptor would be pronounced and significant. To offset some of this impact, the indicative layout for the development shows a green, undeveloped section through the site to ensure that views of the Folly are not obscured from the lay-by. This should be considered as an essential element in any reserved matters layout for the scheme if planning permission were to be granted.

117. The change to the views from the public footpath through the site would be substantial, as the open rural nature of the environs of the path would change to an enclosed urban footpath. The illustrative plan attempts to compensate for this significant change by creating a circular footpath around the perimeter of the site, from which the appellants claim open views of the countryside could be enjoyed. However, this appears to conflict with the claimed intention to strengthen the boundary hedgerows to obscure views of the development from the west. [87/88]
118. From many of the other public viewpoints referred to in both LVIA's, including from the National Trust woodland on Badbury Hill, the footpaths and bridleways near to Step Farm also in the ownership of the National Trust, and from the A417 Lechlade Road, the prominence of the site is partially diminished by distance, hedgerows and/or topography. Nevertheless, from these western viewpoints the development would be seen as an urbanising influence on the landscape extending the existing characteristic hilltop setting of the town down the scarp slope, albeit in this location the scarp is not as characteristically steep as it is further to the west. Given the sloping nature of the land it may take some time for any new landscaping along the western boundary of the site to screen the development adequately. The appellants place great emphasis on the amount of landscaping that would be undertaken to mitigate the impact of the development including new hedgerows and trees [57]. However, the appellants have determined that landscaping is a reserved matter and is not before me other than in the submitted drawing which can only be taken as illustrative.
119. Having regard to both parties' LVIA's, the evidence before me, the DAS, and having also visited the site and seen it from viewpoints near and far, I conclude that the proposed residential development across this prominent hillside would have a detrimental impact both locally and in the wider landscape and would harm the prevailing character and appearance of the NVCR. The proposal would be contrary to the objectives of Policy NE7 and GS2 of the Local Plan.

### ***Biodiversity***

120. The appeal site is within the Oxfordshire Heights, Streams, Woods, Hills and Parks Conservation Target Area (CTA) [13, 57]. CTAs are ecological networks that promote the preservation, restoration and re-creation of priority habitats and populations of priority species. The Oxfordshire local authorities have worked in partnership with Natural England, the Environment Agency, local wildlife trusts and others to identify and map the CTAs in Oxfordshire.
121. Policy NE4 of the Local Plan seeks to protect sites of nature conservation importance from development unless it can be demonstrated that the reason for development clearly outweighs the need to safeguard the nature conservation value of the site and that adequate compensatory habitats are provided. The Framework encourages the promotion, preservation, restoration and re-creation of priority habitats and ecological networks and advocates that the planning

system should enhance the natural and local environment by minimising impacts on biodiversity.

122. Although not listed as a reason for refusal, there was considerable debate at the Inquiry about the potential impact of the development on the nature conservation value of the site with both main parties providing evidence from expert witnesses. A number of ecological appraisals of the site were undertaken at different times of the year [75]. The earlier assessments indicated that parts of the semi-improved grasslands were moderately species rich. Initially the Council considered these areas could be described as habitats of principal importance (priority habitats) in accordance with section 41 of the Natural Environment and Rural Communities Act 2006.
123. Further botanical surveys were undertaken by both parties in May 2014 at a more appropriate time of the year, before the hay crop was taken. Following these detailed surveys, the Council accepted that the grasslands did not contain areas of priority habitat [76]. Nevertheless, the areas of semi improved grassland were considered to be in a transitional state, capable of being restored to priority habitat in accordance with paragraph 117 of the Framework. The Council argued that these areas, known as T3 on the plans, should, as a minimum, be retained and enhanced otherwise there would be a net loss of biodiversity on the site
124. It is unlikely that retention of these T3 areas in situ would preserve their nature conservation interest [76]. Construction works requiring cut and fill of the sloping land, drainage of the site to deal with natural springs on the hillside, and changes to the environs of the grasslands would all be likely to contribute to the reduction of their biodiversity significance which is locally important to Faringdon. Translocation of the important areas of grassland to the northern part of the site was proposed by the appellants [59]. It was argued that this would provide management control of the grassland where none currently exists [69]. However, this is the lowest part of the site at the foot of the slope where the micro-climate, drainage and soil conditions would be different to the drier, north facing sloping ground where the T3 areas currently exist. It is also the area where one illustrative plan shows a new balancing pond and where later evidence suggested it would be the location for underground tanks and a pumping station.
125. Nevertheless, the grasslands are not currently under any form of ecological management arrangement and have no protected status. Their nature conservation value could be lost at any time by a change in farming practices. Although, potentially, the grasslands could be restored to priority habitat as advocated by the Framework, this would require the agreement of the landowner who has indicated that he would not be willing to enter such an arrangement<sup>52</sup>, and would not manage the land for ecological purposes [58].
126. The hedgerows around the site are habitats of principal importance and are included on the Oxfordshire Biodiversity Action Plan. Although approximately 20m of the southern hedgerow would be lost to create the highway access, the Design and Access Statement and the illustrative plans refer to the retention of all other hedges and trees on site and to extensive new planting and landscaping which could be secured by condition [57].

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<sup>52</sup> Document 14



127. I conclude that the impact on the grasslands would not significantly harm local biodiversity and that some mitigation could be secured by condition.

Furthermore, any impact would be outweighed by the proposed enhancement and extension of the site's extensive hedgerows which are habitats of principal importance and would contribute positively towards local biodiversity and the conservation objectives of the CTA.

### ***Foul Drainage Infrastructure***

128. Faringdon STW is currently operating at, and sometimes in excess of, capacity [80]. The level of development approved recently in the area, as a consequence of the Council's HLS position, is significantly higher than anticipated in the Local Plan. Consequently, the necessary infrastructure growth was not planned for as an additional requirement in TW's current AMP which runs to April 2015. The existing waste water infrastructure could not accommodate the appeal scheme. This was the basis of the third reason for refusal, although subsequently, the Council acknowledged that this matter could be dealt with by means of an appropriate condition [60,81]. In their Full Statement of Case dated December 2013, the appellants stated that they would adduce evidence to demonstrate that the issue of the inadequacy of the foul drainage network is capable of being dealt with by the imposition of an appropriate planning condition. The Statement also made reference to the lack of objection from TW, subject to the imposition of a Grampian planning condition.

129. The appellants' proofs of evidence however, stated that i) *there is no need for a foul drainage condition at all*<sup>53</sup> and that, ii) *the condition (Grampian) suggested by the Council would not meet the tests of the Framework*<sup>54</sup>. This position was maintained by the appellants' expert witness who contended that the lack of sewerage treatment capacity did not represent a constraint to the appeal development and that planning conditions relating to foul drainage matters were unnecessary because a separate statutory regime adequately addressed all aspects of foul drainage for new developments [63]. With reference to a Supreme Court judgement<sup>55</sup> the appellants argued that, under the Water Industries Act 1991, a residential developer has a statutory right to connect to the public sewer and that TW cannot refuse a connection on the grounds of inadequate capacity in the local sewerage network or the treatment works [61].

130. Nevertheless, if a developer were to exercise the right to connect, despite a public sewer or treatment works not having the necessary capacity, the potential effect of sewage and waste water from that development on the environment and on amenity would be a material planning consideration. In a legal opinion<sup>56</sup> sought by the appellants, Stephen Tromans QC states, '*A negative "Grampian" style condition can as a matter of law be imposed to restrain commencement or occupation of development until satisfactory arrangements are made to deal with the sewage and wastewater generated, i.e. such a condition would serve a legitimate planning purpose, would fairly and reasonably relate to development, would not be Wednesbury unreasonable and would be enforceable. However,.....the condition would also have to be shown to be necessary and*

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<sup>53</sup> PoE Christopher Still – page 78, paragraph 13.1.2

<sup>54</sup> PoE Christopher Still – Page 93, paragraph 15.9.1

<sup>55</sup> CD 115 Barratt Homes Limited v Dwr Cymru Cyfyngedig (Welsh Water) [2009] UKSC 13

<sup>56</sup> Document 8. Stephen Tromans QC - In the Matter of the Water Industry Act 1991.

- reasonable. It would not be reasonable if it imposes an unjustified burden on the developer.* Neither party dissented from this opinion with which I agree. [61,82]
131. Furthermore, PPG recognises that the timescales for works to be carried out by a sewerage company do not always fit with development needs, and that local planning authorities should consider how new development can be phased. PPG confirms that planning conditions can be used to ensure that new development and infrastructure provision is aligned, and to ensure new development is phased and not occupied until the necessary works relating to sewerage treatment have been carried out. The PPG also confirms that the preparation of local plans should be the focus for ensuring the investment plans of water and sewerage companies align with development needs.
132. The appeal site is unallocated and the proposed development is not plan-led, having been specifically rejected by the LPI. Nevertheless, TW confirmed that the expansion of the STW is a high priority and has been included in their bid for funds for the next five year AMP due to run from April 2015, with completion of the improvements planned for 2017 [80]. The appellants stated that this would tie in with the development timescale which indicated that initial occupations may commence during 2017, with site completion estimated as 2018/19. In these circumstances the appellants argued that there was no requirement to phase the commencement or occupations for the proposed development through the imposition of a planning condition.
133. I am not persuaded by this argument. Neither the appellants' nor TW's timetables can be guaranteed and the appellants' development may be affected by other factors outside of their control, such as the determination of the duly made application to register the land as a TVG. Although I asked during the Inquiry what harm would arise from the imposition of a Grampian condition, none was identified by the appellants. Nor was it demonstrated adequately, given the suggested timescales, how the imposition of a Grampian condition would place an unreasonable burden on the developer. The appellants argued that such a condition could have the effect of delaying the development unless the developer provided a financial contribution to TW which would be an unreasonable burden. However, there is no evidence to support this supposition, and TW confirmed that they are not seeking any contributions from the appellants [62,84].
134. The appellants suggested that if the STW improvements had not been completed by the time of first occupation, it would be possible to install an addition sewage holding tank on the site and either pump the effluent to the STW at times when capacity would be available during the night or to tanker the effluent elsewhere. Quite apart from the potential amenity and environmental considerations of these options, they do not appear to me to be particularly sustainable solutions.
135. The appellants' expert witness concluded that *only granting planning permissions for developments in this area without planning conditions will ensure that Thames Water fully consider the current drainage network and systems in line with its statutory duties.* There is no evidence before me to support this allegation which appears to ignore TW's existing and future AMPs. The consequences of such an unplanned approach would be that, until improvements to the infrastructure and STWs were undertaken, there would be a clear risk that significant additional flows from new unplanned developments could overwhelm

the sewerage network and STWs, resulting in pollution of water courses with unacceptable consequences for the environment and local people. It is crucial that the planning system seeks to avoid such situations.

136. As an alternative to their stated position above, the appellants suggested a condition which would allow 25 houses of the 94 dwellings to be occupied before the STW is upgraded [64]. Such a condition could still give rise to overloading of the STW and pollution, and would therefore, for the reasons set out above, be unacceptable and would not be reasonable.
137. I conclude that, given the circumstances prevailing in Faringdon, and notwithstanding the provisions of the Water Industry Act 1991, the imposition of a Grampian style condition would be necessary in the public interest if planning permission were to be granted. Such a condition would be reasonable given the timescales referred to above, would not impose an undue burden on the developer and would ensure that the development would accord with Policy DC9 of the Local Plan. The condition would meet the tests set out in the Framework.

### **Other Matters – Local Amenity**

138. A group of local residents known as The Friends of Humpty Hill, (FoHH) was granted Rule 6(6) status and gave evidence at the Inquiry [98-100]. FoHH argued that Humpty Hill, as the appeal site is known locally, has long been used as a local amenity space for informal recreation. The group stated that the site is a tranquil, accessible area on the edge of the town, which provides panoramic views from the well used public right of way. Although the public footpath runs along the eastern boundary of the site, walkers frequently walk the perimeter of the field. Photographs were submitted of various activities on the field, including numerous people enjoying sledging down the hill in winter. The Rule 6 (6) party's evidence was accompanied by over seventy statements, many under the banner of the Open Spaces Society, claiming community use over many years. FoHH confirmed that an application to register the land as a Town Green had been duly made before the planning application was submitted and was being considered by Oxfordshire County Council.
139. FOHH argued that Faringdon is deficient in play space and that the loss of this resource would be contrary to Policies L1 and CF1 of the Local Plan which seek to resist the loss of local play space and of existing community resources, unless those facilities can be replaced as part of the proposal or are available elsewhere. Although the proposal includes areas of public open space and play areas, the group argued that this would not be sufficient to outweigh the loss of the field in community use. FoHH also considered that the loss of the facility would be contrary to various objectives of the Framework, including paragraph 9 relating to the quality of life; paragraph 70 – delivering recreational facilities and paragraph 74 relating to the protection of open space.
140. The application to register the site as a Town Green is clearly not a matter for this Inquiry. However, the many evidence statements submitted to the Inquiry demonstrate the community use and enjoyment of the field, and support the Rule 6 (6) party's argument that the appeal site is a valued open community space. I attach some weight to this amenity argument, particularly that element enjoyed through the use of the public footpath on the site, which would be significantly harmed by the proposal. The glossary to the Framework defines open space as *all open space of public value.....which offer important opportunities for sport and*

*recreation and can act as a visual amenity* (my emphasis). The appeal site particularly satisfies this definition as a visual amenity.

### **Other Matters – Faringdon Neighbourhood Plan**

141. Work has been ongoing on the Faringdon Neighbourhood Plan for approximately two years and there have been two rounds of public consultation. The Town Council stated that the Submission version was due to be sent to the District Council immediately after the close of the Inquiry, with an independent examination anticipated in September/October 2014. [101-103]

142. Paragraph 76 of the Framework advises that, through neighbourhood plans, local communities should be able to identify for special protection green areas of particular importance to them, which would then be ruled out for new development other than in very special circumstances. In the Faringdon Neighbourhood Plan, the appeal site is proposed as a 'Green Space'. The emerging plan was subsequently formally submitted to the Vale of White Horse District Council after the close of the Inquiry, and therefore, the proposed designation of the site attracts some weight in the determination of this appeal.

### **Other Matters – Housing Land Supply**

143. It was common ground between the main parties that the Council could not demonstrate a 5 year supply of deliverable housing land at the time of the Inquiry. The Council initially considered that the supply was in excess of 4 years, but subsequently accepted that using the Sedgfield method to accommodate the backlog the supply fell to in excess of 3 years [44]. The appellants went to some length to argue that the HLS was substantially less than the Council's estimate and that, in the planning balance, the weight to be attached to the shortfall, should reflect the severity of the deficiency. However, the appellants did not suggest any thresholds for increasing different levels of weight. [47,48].

144. The Framework does, in places, embrace the concept of attaching variable weight, but not in relation to HLS. For instance in paragraph 215, the Framework confirms that greater weight may be given to development plan policies the closer they are to the policies in the Framework. Paragraph 132 in relation to heritage assets, advocates *the more important the asset, the greater the weight should be*. However, the Framework does not introduce a sliding scale of weight in relation to the scale of the deficiency of HLS.

145. Nevertheless, the need for residential development is a material consideration and the lack of a five year HLS carries significant weight, irrespective of the scale of the deficiency. However, that deficiency does not mean a 'free for all' for housing development [94]

### **Other Matters – Affordable housing**

146. The parties agree that there is a pressing unmet need for affordable housing in the district. It is proposed that 40% of the new dwellings on the appeal site would be affordable homes, in accordance with Policy H17 of the Local Plan. This provision could be secured by a condition and would be a significant benefit of the scheme [51].

### ***Other Matters – Sustainable Development***

147. Faringdon is a market town with a good range of services and facilities including education, leisure, hotels, public houses and retail. The town is identified in the Local Plan as one of the five main settlements in which to locate most new development<sup>57</sup>. The Local Plan 2031 Consultation Draft – February 2014 describes Faringdon as a sustainable market town with an excellent range of services and facilities, that acts as a service centre for a large rural catchment. Although the emerging Neighbourhood Plan identifies a need for more employment opportunities in the town, it is evident that Faringdon is a sustainable location for development.
148. A sustainable location does not necessarily mean, however, that a proposal can be considered as sustainable development for which the Framework emphasises a presumption in favour. The Framework advocates that there are three dimensions to sustainable development, and confirms that economic, social and environmental gains should be sought jointly and simultaneously through the planning system to achieve sustainable development. The proposal would generate substantial economic investment and jobs in the area during construction, and future residents would be likely to support local services and businesses. By providing a mix of dwellings to meet the needs of present and future generations, including much needed affordable homes in an area where there is an identified shortfall, significant social gains would be achieved. Although there would be some harm to the grassland habitats, that would be outweighed by the enhancement of the priority habitat hedgerows and tree planting which would be an environment gain contributing to biodiversity and to the aims of the CTA.
149. Overall I consider that the proposal would represent sustainable development for which the Framework confirms that there should be a presumption in favour.

### **Conditions**

150. Lists of draft conditions suggested by the Council and the appellants were attached to the SoCG and were discussed at the Inquiry. After the close of the Inquiry a list was submitted of 15 conditions agreed between the parties (*Document 32*). The list also referred to 3 areas of disagreement relating to the need for and/or the wording of conditions regarding ecology off-site compensation, foul drainage, and approved plans/reserved matters principles. I have considered and where appropriate modified these draft conditions and the areas of dispute in recommending the conditions to be imposed if planning permission were to be granted.
151. In addition to the standard conditions relating to the timescale for the submission of reserved matters applications and the commencement of development, the reserved matters should include details of the topographical alterations to the site and the materials to be disposed off-site in the interests of the character and appearance of the area and to minimise potential impact on the adjacent LWS. To ensure that the development would be in keeping with the surroundings, reserved matters should also be consistent with the principles contained within the Design and Access Statement, particularly in relation to

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<sup>57</sup> Vale of White Horse District Local Plan 2011 paragraph 3.2

number and scale of dwellings. Schemes for the provision of play areas and open space should be submitted to secure provision at the appropriate level.

152. In the interests of highway safety and the amenity of local residents, a scheme of traffic calming on Highworth Road, and a construction method statement, should be submitted for approval. A scheme for the archaeological investigation of the site will be necessary in the interests of the local history of the area. A phased contaminated land risk assessment should be required by condition to protect the local environment and the health of future occupants of the site. A scheme for the delivery of the affordable housing on the site will be required to ensure the appropriate level and mix of provision, tenure and future management.
153. A sustainable urban drainage scheme for the site has been suggested, the details of which should be secured by condition to ensure the adequacy of the scheme in the interests of the local environment. To promote the use of non-car modes of transport in the interests of sustainability, a travel plan will be required. To protect the trees on the site in the interest of visual amenity, an arboricultural method statement should be submitted. A scheme for dealing with the identified locally important grassland areas of the site will be required in the interests of the local ecology. I have not recommended the Council's proposed condition on ecology off-site compensation as I do not consider that such a measure has been justified in the particular circumstances of this site. In order to safeguard the adjacent LWS, hydrological surveys and measures to ensure its protection should be submitted. I have recommended the condition put forward by the Council to deal with foul drainage from the site to ensure that the development would not give rise to pollution or loss of amenity. Finally, it is important that the development is carried out in accordance with the approved plans for the avoidance of doubt. Suggested conditions are set out as an annex to this report.

## **Obligations**

154. Two completed s106 obligations were submitted at the Inquiry. One obligation was a unilateral undertaking by the appellants and the owners of the land to make financial contributions to the Council, Faringdon Town Council and TVP to mitigate the impact of the proposed development. The second document was a planning agreement between Oxfordshire County Council (OCC), the appellants and the land owners relating to contributions to, amongst other things, education, social and healthcare facilities, library provision, bus services, footpaths, museum service and waste infrastructure. Both obligations contain a clause that in the event of the Planning Inspector deciding that any of the payments are not compliant with the Community Infrastructure Levy Regulations – Regulation 122 (CIL) that part of the planning obligation shall cease to have effect and there shall be no obligation to comply with it. The appellants were given the opportunity to revise the documents to reflect the change in the decision taker following recovery by the SoS.

### *Section 106 Planning agreement*

155. There was no dispute between the parties that the contributions towards secondary education, sixth form places, special educational needs and bus services would be CIL compliant, with which I concur. It was also agreed that a contribution to primary education would also be CIL compliant, although there was significant disagreement about the level of the contribution. The primary

education contribution is based on the assumption that the development would generate a demand for 24 primary school places. As a consequence of this and other significant residential developments in Faringdon, there is an identified need for a new school for 210 pupils aged from 4 to 10 years. OCC provided evidence that the new school would cost £5,129,000, including external works, school set up costs, fees and measures to reduce carbon emissions to deliver a 'low carbon' building, but excluding any potential land costs. The contribution sought is £586,176.00 based on £24,424.00 per pupil.

156. The appellants argued that this cost per pupil reflected OCC's aspirations for a zero carbon school and was unfair and unreasonable as it was almost double the figure suggested by the Department for Education. Nevertheless, the Framework confirms that the purpose of the planning system is to contribute to achieving sustainable development and that planning has a key role to play in meeting the challenges of climate change. Paragraph 95 of the Framework specifically urges local authorities when setting any local requirements for a building's sustainability, to do so in a way consistent with the Government's zero carbon buildings policy. Given these national priorities, I consider that the contribution sought by OCC towards a new primary school, based on £24,424.00 per pupil, would be necessary to make the development acceptable in planning terms, would relate directly to the development, and would fairly and reasonably relate to the scale of the proposal.
157. Faringdon library is undersized in relation to its catchment population and the OCC's adopted floor space standards per 1,000 head of population. The County Council stated that a feasibility study was being undertaken into the expansion and refurbishment of the existing library. The contribution sought comprises £14,534.00 toward the library expansion project and £4,460.00 towards the purchase of additional books based on the increased demand for the service from the new development. The appellants argue that neither contribution has been adequately explained and that there would be physical difficulties expanding the present library next to a listed building and in the conservation area. Nevertheless, the size of the library does not meet OCC's standards and the shortfall per head of population would be exacerbated by the proposed development. OCC confirmed that there is potential for expansion on the existing site. Therefore, I conclude that the contributions to the expansion of the library and its book stock would meet the CIL tests.
158. The County Museum Resource Centre provides support to museums and schools for education, research and leisure activities. The facility is said to be operating at capacity and an extension estimated to cost £460,000 is planned to meet the increasing demand from new developments. Given that the proposal and other developments in Faringdon will necessitate a new school, which will increase demand for museum services, I consider that the modest contribution sought of £1,115.00 based on £5 per head for the new development would meet the CIL tests.
159. It is reasonable to assume that a proportion of the new residents in the proposed development would place increased demand on adult learning and social and health day care facilities in the area. New facilities for these services are planned at Grove, which serves Faringdon.

160. With regard to day care provision, OCC estimated that based on current and predicted usage figures, 10% of the population aged 65 years and over use day care facilities. Based on the estimate of 24 residents aged 65 and over within the proposed development, a contribution of £26,000.00 is sought towards a new day care centre. The appellants disputed the need for the contribution and referred to two recent appeal decisions at Steventon<sup>58</sup> and Bloxham<sup>59</sup> in which the contributions were not considered to be CIL compliant. However, in the first decision it was not clear what the contribution would fund, and in the second decision the contribution was towards the running costs of a day care centre. I consider that the provision of a new facility to meet demand arising from an increase in population, as a direct result of the development, would be necessary, appropriate in scale and reasonable.
161. The appellants disputed the contribution of £2,512.00 towards a new adult learning facility at Grove and questioned OCC's assumption that 5% of the adult population take up adult learning. The appellants again made reference to the Bloxham appeal referred to above. However, in that case I note that the Inspector recorded in his report to the SoS, that no figures had been provided to substantiate the contribution. With this appeal OCC provided details of the cost of the proposed new facility at Grove to serve Faringdon and stated that at least 5% of the adult population take up adult learning *based on the County Council's experience* (my emphasis). In the absence of any evidence to the contrary from the appellants, I am satisfied that the proposed development would generate increased demand for adult learning and that, on the evidence before me, the contribution towards a new facility would satisfy the tests.
162. £10,000 is sought by OCC towards the cost of maintaining public rights of way to the west of the site, on the premise that the paths would need increased maintenance as the development would lead to increased use. Little evidence has been submitted to support this claim or to provide details of how the figure has been calculated. The contribution would not be necessary to make the development acceptable in planning terms and would not, therefore, be compliant with Regulation 122 of the CIL.
163. Lastly, OCC sought a contribution of £5,000 towards OCC's costs of monitoring and administering the s106 agreement. The appellants argued that the contribution was not necessary to make the development acceptable in planning terms, that the applicant had paid a fee for the determination of the application, and that there is no justification for additional internal or external resources. Although administration is a function of local government, monitoring all s106 planning obligations throughout the County must place an extra burden on the authority with its associated costs. OCC submitted copies of two separate opinions on this matter from Ian Dove QC<sup>60</sup>. He advised that, once it is accepted that an obligation is necessary as a matter of planning judgement, then the proper costs of administering that obligation cannot rationally be found to be unnecessary in planning terms simply because the administration is a function of the local authority. I am persuaded by this opinion and conclude that the administration fee of £5,000.00 would be compliant with the CIL tests. There is

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<sup>58</sup> APP/V3120/A/13/2192205 – CD9

<sup>59</sup> APP/C3105/A/12/2178521 – CD8

<sup>60</sup> Document 23



no merit in the appellants' argument that a planning fee has been paid, as the fee is paid to the District Council, irrespective of whether there is an obligation.

### *Section 106 Unilateral undertaking*

164. The unilateral undertaking covers contributions sought by the Council, TVP and Faringdon Town Council. The contributions requested by the Council amount to £313,640.00 including £223,188.00 for the maintenance of the proposed public open space over a 20 year management period and £90,452.00 towards a range of sports and leisure facilities.
165. The appellants accepted that the public open space contribution would be compliant with CIL regulations and the Council's adopted Supplementary Planning Document – *Open Space, Sport and Recreation Future Provision*<sup>61</sup>. I agree with the appellants on this matter and with the appellants further acceptance that the contributions sought towards a Multi Use Games Area (MUGA) (£20,489.00) and football pitches (£15,987.00) would meet the three tests of necessity, relevance and reasonableness. However, the appellants challenged the Council's argument that there was a shortfall in changing pavilions as there would not appear to be any assessment to identify either a qualitative or quantitative deficiency. Nevertheless, having accepted the need for over 2 hectares of new pitches and a MUGA, additional changing facilities would appear to be a reasonable requirement. I consider that the contribution of £17,125.00 toward a changing pavilion would be CIL compliant.
166. The appellants also questioned whether the case has been adequately made for the artificial grass pitch (AGP) contribution of £6,031.00, given that there is an AGP at Swindon Academy within 20 minutes drive time. Nevertheless, the need for a full size AGP in Faringdon has been identified in the Council's Leisure and Sports Facility Strategy (2013)<sup>62</sup>, and the emerging Neighbourhood Plan regards an AGP as '*a key outstanding need*' for the town. This relatively modest contribution would relate fairly to the proposed development and would be CIL compliant.
167. I agree with the appellants' assessment that the contributions requested towards, the swimming pool and sports hall (£4,330.00); health and fitness (£19,159.00) and outdoor tennis (£7,331.00) have not been demonstrated to be CIL compliant. There is no identified deficiency in swimming pool and hall provision in the area, and the contribution sought is for maintenance and repair only, which would not relate directly to the proposed development.
168. The Council contended that there is a quantitative deficiency in fitness equipment at the Faringdon Leisure Centre, and that an extension of the facility is required to accommodate additional gym stations to meet the identified standard for the population of the town. However, the Council's case does not appear to take into account the existence of other fitness facilities in the vicinity which, according to the appellants, results in an overprovision. The contribution would not be necessary to make the development acceptable in planning terms.

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<sup>61</sup> CD61

<sup>62</sup> CD96

169. The outdoor tennis contribution would be used to make up a shortfall in the cost of Faringdon Tennis Club's transfer to a new site and to mitigate the pressure on the tennis club arising from the new development. However, the appellants advised that there are other tennis courts within a 15 minute drive of Faringdon and that, therefore, the impact on the Faringdon Tennis Club could not be adequately justified to satisfy the CIL regulations, with which I agree.
170. TVP requested £22,000.00 towards two Automatic Number Plate Recognition Cameras (ANPRs) and £6,490.00 towards a new police vehicle to offset the impact of the proposal on day to day policing. TVP argued that the 94 proposed houses would generate approximately 44 additional incidents requiring a police presence each year, and that, therefore, the development should contribute about 25% of the capital cost of a police support vehicle. TVP stated that the ANPRs *will be used principally to serve the development.....we would anticipate them being located close to the site, however, it is acknowledged that these items will not be exclusively used to 'police the development'*.
171. The Framework highlights the need for safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion. Given this requirement and having regard to legal advice by Ian Dove QC<sup>63</sup> submitted by TVP with their position statement, I accept that, in principle and subject to the CIL tests, relevant and proportionate costs of additional police equipment necessitated by new development should be eligible for developer contributions. However, in this case I am not persuaded that the contributions sought have been robustly justified to be considered necessary to make the development acceptable in planning terms, directly relevant to the development and fairly and reasonably related in scale to the proposal.
172. Little evidence has been provided to explain TVP's calculation that 94 new dwellings would be likely to generate 44 incidents per year, equivalent roughly to one police visit every 8 days, which appears to me to be unrealistic. The requested 25% contribution to a police vehicle equates to one vehicle for every 376 dwellings which again seems to me to be excessive, with little evidence to demonstrate whether this is the standard throughout the Force's area. The claim that the two ANPRs would be used 'principally' to serve this relatively small development, when the appellants point out that there are no others in this rural market town, is difficult to accept and would not be fair and reasonable in relation to the scale of the development, even allowing for their use elsewhere. For these reasons, and on the evidence before me, I consider that the requested contributions would not be CIL compliant. I note TVP's reference to two appeal decisions in Leicestershire<sup>64</sup> where it was concluded that police contributions met the tests. However, I am not aware of the details of the evidence submitted with those appeals to justify the contributions.
173. Faringdon Town Council submitted a long list of projects in the town to which contributions were sought. These included a coach park to attract more visitors to the town, a band stand, improvements and repair to various buildings in the town such as the Corn Exchange, the Pump House and the iconic Folly Tower and several other projects. With the exception of the requested contribution to the

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<sup>63</sup> See attachment to TVP's statement in Red Folder

<sup>64</sup> APP/F2415/A/12/2179844 and APP/X2410/A/12/2173673 attached to TVP statement

community bus, which is covered in the Agreement with OCC, from the evidence before me, none of these contributions would appear to be directly related to the proposed development or would be necessary to make the development acceptable in planning terms for any weight to be attributed to those particular elements of the planning obligation.

## Overall Conclusions

174. Paragraph 49 of the Framework confirms that relevant policies for the supply of housing should not be considered up-to-date if a 5 year HLS cannot be demonstrated. Policies GS1 and GS2 are therefore, out of date in-so-far as they relate to the supply of housing. Paragraph 14 of the Framework is, therefore, engaged. It advocates that sustainable development should be granted permission where relevant policies are out-of-date unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.
175. The benefits of the scheme would include the provision of much needed market and affordable housing to contribute towards acknowledged substantial shortfalls. This would be in accordance with the requirement of the Framework to boost significantly the supply of housing and carries very significant weight in favour of the proposal. In addition, the scheme would generate considerable economic benefits as set out above and environmental gains through the enhancement of priority habitats. The proposal would represent sustainable development in Faringdon, albeit immediately outside the town's development boundary. Nevertheless, I attach little weight to this conflict given that the boundary is intended to restrict development in accordance with Policies GS1 and GS2 which are no longer up-to-date.
176. The development would have an adverse visual impact both locally and on the wider landscape and would harm the local prevailing character of the NVCR, contrary to the objectives of Policy NE7. I consider that Policy NE7 is not a policy relevant to the supply of housing as it relates to the natural environment and seeks to protect the valued landscape of the NVCR. It is consistent with the locally designated provisions of the Framework. The proposed development's conflict with Policy NE7 carries weight against the proposal.
177. There would also be some harm to the locally important grassland habitat, although this could be partly offset by mitigation and management measures. The enhancement of the priority habitat hedgerows and increased tree planting would improve local biodiversity and would also offset that harm. Potential harm caused by waste water pollution and contamination could be adequately addressed by conditions restricting occupation of the development until improvements to the STW are completed.
178. The development would be contrary to the proposed designation of the site as green space in the emerging Faringdon Neighbourhood Plan. However, at the time of writing this Report to the SoS, that plan had not been the subject of examination and, therefore, the weight which can be attributed to that designation is not sufficient, at this stage, to outweigh the significant benefits of the scheme set out above. The outcome of the application to register the site as a Town Green may raise a question mark over whether this development could proceed and the deliverability of the housing benefits advanced as carrying weight in favour of the scheme. However, that application is subject to a separate decision process and is not a matter for this Report.

179. I conclude that the adverse impacts of the proposed development, although considerable, would not significantly and demonstrably outweigh the substantial benefits when assessed against the policies of the Framework as a whole.

**Recommendation**

180. I recommend that the appeal be allowed and planning permission be granted subject to the appropriate conditions set out in the attached annex.

*Anthony Lyman*

INSPECTOR

## **ANNEX – SUGGESTED CONDITIONS**

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved. Details shall be included of boundary treatments; existing and proposed site levels; location, excavation and backfilling for attenuation solution; details of the extent of cut and fill on site; site storage and sequencing of excavation and filling on site during construction; and the volumes of materials to be disposed off-site.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be undertaken in accordance with the approved plans - the Location Plan – FAR/12/001, and the Proposed Site Access Junction plan – 0343-F03 Rev B.
- 5) The submission of reserved matters in respect of layout, scale, appearance and landscaping and the implementation of the development shall be carried out in substantial accordance with the principles contained within the submitted Design and Access Statement and the approved plans.
- 6) The development hereby approved shall include no more than 94 dwellings and no dwelling shall be more than two storeys in height.
- 7) No development shall commence until a scheme for traffic calming and speed restraint along Highworth Road, including an implementation timetable, has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the agreed scheme and timetable and thereafter retained.
- 8) No dwelling shall be occupied until a local equipped area of play and a local area of play have been provided, in accordance with a scheme which has been submitted to and approved in writing by the local planning authority. Thereafter, those areas shall be retained in the approved form and shall not be used for any other purpose.
- 9) No development shall take place, including site clearance or preparation, until a programme of archaeological work has been implemented in accordance with a written scheme of investigation, including an implementation timetable, which has been submitted to and approved in writing by the local planning authority. The programme of work shall include all processing, research and analysis necessary to produce an accessible and useable archive and a full report for publication which shall be submitted to the local planning authority, within an agreed time-scale.
- 10) No development shall take place until a site investigation of the nature and extent of contamination has been carried out in accordance with a methodology that has previously been submitted to and approved in writing by the local planning authority. The results of the site investigation shall be

made available to the local planning authority before any development begins. If any contamination is found during the site investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted, shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved plans before development commences. If during the course of development any contamination is found which was not identified in the site investigation, additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the additional measures. If ground remediation is required, a Site Completion Report detailing the conclusions and actions taken at each stage of the works, including validation works, shall be submitted to and approved in writing by the local planning authority prior to the first use or occupation of any part of the development hereby approved.

- 11) No development shall take place until a travel plan has been submitted to and approved in writing by the local planning authority. The travel plan shall include proposals for all travel by modes other than the private car for journeys to and from the site.
- 12) No development shall take place until a scheme for the sustainable drainage of the site, including an implementation timetable, and details of the future maintenance and management of the sustainable drainage scheme, have been submitted to and approved by the local planning authority. The scheme shall be implemented and thereafter managed and maintained in accordance with the approved details and timetable.
- 13) No development shall take place, including site clearance or preparation, until an arboricultural method statement including details of the measures to be taken to protect the retained trees and hedgerows on the site during construction, and an implementation timetable, has been submitted to and approved in writing by the local planning authority. Thereafter, development and works shall be carried out in accordance with the approved details and timetable. At all times during construction, the tree protection areas shall be kept clear and shall not be used for any other purpose including the parking or manoeuvring of vehicles, and the storage of materials or soil.
- 14) No development shall commence, including site clearance or preparation, until a detailed, grassland mitigation/compensation strategy and implementation timetable has been submitted to and approved in writing by the Local Planning Authority. This should include either: a plan showing the proposed location of grassland (areas identified as TN3) to be retained in situ within the development and details of new grassland areas to be created within the site including species mix; or a translocation method statement based on an assessment of current conditions, including hydrology, topography and soils and using current best practice guidance and giving details of new grassland areas to be created within the site including species mix. The strategy should also include a long term management plan for the site covering 25 years and include all habitats to be retained and created. Development shall be carried out in accordance with the approved details and timetable.

- 15) No development shall commence, including site clearance or preparation, until detailed hydrological surveys have been undertaken, and a scheme, including an implementation timetable, submitted to and approved in writing by the local planning authority to ensure that the existing hydrological regime with Faringdon Wet Meadow Local Wildlife Site is protected and maintained. The development shall be carried out in accordance with the agreed details and timetable.
- 16) None of the dwellings hereby approved shall be occupied until the completion of works to ensure sufficient capacity at the Faringdon Sewage Works to accommodate the foul water drainage from the development proposed, or it is confirmed in writing by the sewerage undertaker that sufficient sewage capacity exists to accommodate the development.
- 17) The development shall not begin until a scheme for the provision of affordable housing as part of the development has been submitted to and approved in writing by the local planning authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing set out in the Glossary to the National Planning Policy Framework or any future guidance that replaces it. The scheme shall include:
  - i) the number, type and location on the site of the affordable housing provision which shall consist of not less than 40% of the housing units distributed across the site with no more than 15 per cluster. The tenure of the affordable units shall be split 75% rented units and 25% shared ownership;
  - ii) the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;
  - iii) the arrangements for the transfer of the affordable housing to an affordable housing provider or the management of the affordable housing if no Registered Housing Provider is involved;
  - iv) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and
  - v) the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.
- 18) No development shall take place, including any site clearance or preparation, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
  - a) the parking of vehicles of site operatives and visitors
  - b) loading and unloading of plant and materials
  - c) storage of plant and materials used in constructing the development
  - d) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
  - e) wheel washing facilities
  - f) measures to control the emission of dust and dirt during construction

- g) a scheme for recycling/disposing of waste resulting from demolition and construction works
- h) A routing protocol for vehicles entering the site from the nearest trunk road
- i) A photographic survey of the condition of Highworth Road and a scheme to make good any damage to Highworth Road caused by the construction of the development



## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Mary Cook of Counsel

She called	
Michèle Lavelle	Partner, 4D Landscape Design
Dominic Lamb BA MSc MCIEEM	Countryside Officer Vale of White Horse District Council
Mark Dickinson	Development Planning Manager, Thames Water Utilities Ltd.
Dr Thomas Roche BA (Hons) PhD BTP (DIST) MRTPI	Director, PCL Planning Ltd.
David O'Neil BSc (Hons) DipTP MRTPI	MD, Nortoft Planning and Land Development
Susan O'Neil	Nortoft Planning and Land Development
Ian Prosser	Oxfordshire County Council

### FOR THE APPELLANTS:

John Barrett of Counsel

He called	
Marc Hourigan BA (Hons) BPL MRTPI	Director, Hourigan Connolly
George Venning MA (Cantab)	Associate Director, Levvel Ltd.
Alex Day	Director, Utility Law Solutions Ltd.
Kate Hollins BA MSc CMIEEM CEnv	FPCR Environment and Design Ltd.
Carl Taylor BA (Hons) Dip La CMLI	Director, TPM Landscape
Christopher Still BSc MRICS	Planning & Development Manager, Gladman Developments Ltd.

### FOR THE FRIENDS OF HUMPTY HILL

Robert Stewart	Friends of Humpty Hill
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### INTERESTED PERSONS:

Michael Stubbs MRICS	Planning Advisor, The National Trust
Cllr Roger Cox	Ward Member and Cabinet Member for Planning Development, Vale of White Horse District Council
Dr Michael Wise	Faringdon Town Council
Ian Lee	Local resident
Gene Webb	Local resident

## DOCUMENTS

### *Submitted at the Inquiry*

1. Opening submissions on behalf of the Local Planning Authority
2. Opening Submissions on behalf of the Appellants
3. Submission on behalf of the National Trust
4. Statement of Common Ground signed by both parties on 1 July 2014
5. Statement of Common Ground in Relation to Ecology Matters
6. Contents pages to the Vale of White Horse Local Plan 2011
7. Extracts - Guidelines for Landscape and Visual Impact Assessment 3<sup>rd</sup> Edition
8. Legal Opinion by Stephen Tromans QC – re Water Industry Act 1991 sought by Gladman Developments Ltd and Utility Law Solutions Ltd
9. Extract from Consultation Draft Local Plan 2031 Part 1 re proposed strategic site allocation –South West Faringdon
10. Suggested list of conditions with comments from both main parties
11. Page 300 (Glossary) of Vale of White Horse Local Plan 2011
12. Page 46 of the Guidelines for Landscape and Visual Impact Assessment 3<sup>rd</sup> Edition
13. Appeal Decision – APP/A0665/A/13/2196893
14. Letter from Mr CFN Allaway (landowner) dated 8 July 2014
15. Consultation response from the Council's Landscape Architect dated 19 June 2014
16. Statement of justification for Oxfordshire County Council's planning obligation requirements (non-transport)
17. Email from Tom Johnson, Solicitor, Gladman Legal Department, dated 9 July 2014 enclosing amended page 23 of the proposed Unilateral Undertaking
18. Photograph of Public Notice recently erected on Humpty Hill
19. Response of the appellants to contributions sought in respect of 'Land North of Highworth Road, Faringdon'
20. Faringdon Town Football Club – Refurbishment Proposals
21. List of proposed housing developments in Faringdon and contributions sought from them by the Town Council
22. Facts and Statistics sheets re local services including Libraries, Thames Valley Police, Social Health facilities and extracts from the 2011 census
23. Advice from Ian Dove QC in relation to Section 106 Management Fees
24. List of financial contributions sought by Faringdon Town Council re appeal proposal
25. FAZE Report 2014
26. Court of Appeal (Civil Division) Judgement [2014] EWCA Civ 567 Case Nos: C1/2013/2619, 2622, 3551 and 3781
27. Section 106 Planning Obligation dated 9 July 2014 between Oxfordshire County Council, the landowners and Gladman Developments Ltd.
28. Section 106 Unilateral Undertaking by Gladman Developments Ltd and the landowners
29. Closing submissions by The Friends of Humpty Hill (Rule 6 Party)
30. Closing submissions on behalf of the Local Planning Authority
31. Closing submissions on behalf of the Appellants

### *Submitted after the Inquiry*

32. Conditions- Final draft of agreed and disputed conditions
33. Final draft of Faringdon Neighbourhood Plan\*

- 34.Faringdon Neighbourhood Plan Evidence Base Review\*
  - 35.Faringdon Neighbourhood Plan Sustainability Appraisal\*
  - 36.Photographs of activities on Humpty Hill
- \* *Submitted electronically*

*Plans submitted at the Inquiry*

- P1. Site location and context (2013.30 LM-0-(R) D01)
- P2. Topography (2013.30 LM-0-(R) D02)
- P3. Gradients: Comparisons across sites (2013.30 LM-0-(R) D02)
- P4. Contour Plan showing sites north and south of Highworth Road

**Proofs of Evidence and Appendices**

*For the Council*

- Michèle Lavelle – Proof of Evidence
- Dominic Lamb – Proof of Evidence, Supplementary Statement and Appendices
- Dr Thomas Rocke – Proof of Evidence, Rebuttal Proof of Evidence and Appendices
- Mark Dickinson – Proof of Evidence and Appendices
- David O’Neil - Proof of Evidence and Appendices

*For the Appellants*

- Marc Hourigan – Proof of Evidence and Appendices
- George Venning - Proof of Evidence and Appendices
- Alex Day - Proof of Evidence and Appendices
- Philip Wooliscroft - Proof of Evidence and Appendices
- Kate Hollins – Proof of Evidence, Update to the Proof of Evidence and Appendices
- Carl Taylor – Proof of Evidence and Appendices; Rebuttal Proof and Appendices
- Christopher Still – Proof of Evidence, Appendices, Rebuttal Proof and Appendices

*For the Rule 6 Party*

- Robert Stewart– Proof of Evidence and Appendices

**Core Documents**

<b>CD 1</b>	<b>Submitted Planning Application Documents</b>
1.1	Application Covering Letter, Application Form and Certificates
1.2.1	Location Plan (including Application Red Line) - Drawing No. FAR/12/001
1.2.2	Block Plan - Drawing No. 1662-02 Revision A
1.3	Topographical Survey - Drawing No.S12/533
1.4	Development Framework Plan - Drawing No. 1662-01 Revision G
1.5	Design & Access Statement
1.6	Landscape & Visual Impact Assessment
1.7	Transport Assessment
1.8	Travel Plan Framework
1.9	Ecological Appraisal

1.10	Arboricultural Report
1.11	Phase 1 Site Investigation Report
1.12	Flood Risk Assessment Report
1.13	Air Quality Assessment Report
1.14	Noise Assessment Report
1.15	Archaeological Desk Based Assessment Report
1.16	Utilities Appraisal Report
1.17	Soil Resource & Agricultural Use & Quality of Land
1.18	Energy and Sustainability Statement
1.19	Statement of Community Involvement
1.20	Affordable Housing Statement
1.21	Education Impact Assessment Report
1.22	Supporting Planning Statement
1.23	Socio-Economic Impact Assessment
1.24	Section 106 Agreement Draft Heads of Terms
<b>CD 2</b>	<b>Additional and amended documents submitted after Validation</b>
2.1	Utility Law Solutions Report August 2013
2.2	Archaeological Geophysical Survey Report
2.3	Supplementary Ecology Information Report
2.4	Non Motorised Users Audit & Traffic Calming Plan 0343-F04
<b>CD 3</b>	<b>Correspondence with Vale Of White Horse Council (VoWH) and Oxfordshire County Council (OCC)</b>
3.1	Decision Notice 1st October 2013
3.2	Delegated Report 30th September 2013
3.3	1 October 2013 Email from VoWH to Gladman regarding the landscape issue.
3.4	1 October 2013 Email from Gladman to VoWH regarding landscape and Gladman responses to Consultees not uploaded to website.
3.5	1 October 2013 Email from VoWH to Gladman confirming that a decision will be issued the same day and stating that the refusal is mainly on landscape impact.
3.6	30 September 2013 Email and letter from Gladman to VoWH outlining concerns in respect of delay, lack of communications regarding reasons for intended refusal.
3.7	17 September 2013 Email from Gladman advising VoWH of the response from Opus to the comments by the Senior Conservation Officer of the Wildlife Trusts and Ecologist Officer.
3.8	13 September 2013 Email from Gladman to VoWH submitting Supplementary Ecology Information Report (For report attachment refer to Folder 2 - CD 2.3)
3.9	11 September 2013 Email to VoWH submitting a copy of the draft NMU and traffic calming plan issued by Croft Transport Solution to John Patey of OCC on 3 September 2013.
3.10	11 September 2013 Email from Gladman advising VoWH timescale for submission of the supplementary Ecological survey.
3.11	2 September 2013 Email from VoWH to Gladman stating that the details of the refusal on Landscape and Visual grounds will be available on line.
3.12	2 September 2013 Email from Gladman to VoWH requesting details of the refusal on Landscape and Visual.

3.13	27 August 2013 Email from Gladman submitting Archaeological Geophysical Survey/Report to the VoWH.(For report attachment refer to Folder 2 - CD 2.2)
3.14	19 August 2013 Email from Gladman advising VoWH of the response from TPM Landscape on the 16 August 2013 to the question of Open Space provisions raised by Peter Dela and David O'Neil of VoWH.
3.15	19 August 2013 Email from Gladman advising VoWH of the response from TPM Landscape on the 16 August 2013 to the Town Council's comments 22 July 2013 together with Gladman's clarification of the omission of the care apartments
3.16	19 August 2013 Email from Gladman advising VoWH of the response from TPM Landscape on the 16 August 2013 to the Landscape Officer's comments 29 July 2013.
3.17	19 August 2013 Email from Gladman advising VoWH of the response from TPM Landscape on 16 August 2013 to the Crime Prevention Officer's comments 7 August 2013.
3.18	19 August 2013 Email from Gladman advising VoWH of the response from TPM Landscape on 16 August 2013 to the Equality Officers undated comments.
3.19	19 August 2013 Email string from Gladman advising VoWH of progress on Highway matters between the Highway Officer and Croft Transport Solutions.
3.20	16 August 2013 Email string from Gladman advising VoWH of progress on the supplementary Ecological survey.
3.21	14 August 2013 Email string from Gladman advising VoWH of progress on the additional Archaeological survey including preliminary results of the survey.
3.22	12 August 2013 Email from Gladman to VoWH submitting Utility Law Solution's report in response to the comments raised by Thames Water on the Drainage and Water on the 19th and 29th July 2013 (For report attachment refer to Folder 2 - CD 2.1 & Folder 3 - CD 4.9 for Thames Water's Initial Response)
3.23	25 July 2013 Email from Gladman to VoWH advising that Gladman have instructed Archaeologist to do further survey work
3.24	16 July 2013 Letter of Acknowledgement of Planning Application by VoWH to Gladman
3.25	2 July 2013 Letter from Gladman to VoWH with CD and hard copy of revised Block Plan revision A
3.26	28 June 2013 Email from VoWH to Gladman - reminder of their email 21 June 2013
3.27	24 June 2013 Letter from Gladman to VoWH with CD and hard copy of revised drawings amending scale bar
3.28	21 June 2013 Email from VoWH to Gladman requesting CD and hard copy of site plan
<b>Statement of Case &amp; Common Ground</b>	
<b>CD 4</b>	Draft Statement of Common Ground
4.1	Appendix 1 Draft List of Planning Conditions
<b>CD 5</b>	
5.1	Appendix 1 Draft Core Documents List
5.2	Appendix 2 Responses to Third Parties
5.3	Appendix 3 Draft S.106 Heads of Terms
5.4	Appendix 4 CIL Compliance Table

5.5	Appendix 5 Parameter Plan Drawing 1662-04
5.6	Appendix 6 VoWH Five Year Housing Land Supply Statement August 2013
<b>Appeal Decisions</b>	
<b>CD 6</b>	Tetbury, Gloucestershire JR Decision 27 November 2013
<b>CD 7</b>	Bourne Lane, Hook Norton SoS Allowed 23 September 2013
<b>CD 8</b>	East of Bloxham Road, Banbury SoS Allowed 23 September 2013
<b>CD 9</b>	Barnett Road, Steventon, Oxfordshire 25 July 2013
<b>CD 10</b>	Towcester Road, Silverstone 24 July 2013
<b>CD 11</b>	Land East of Drayton Road, Abingdon
<b>CD 12</b>	Highfield Farm, Tetbury, Gloucestershire SoS Allowed 13 February 2013
<b>CD 13</b>	Shottery, Stratford upon Avon 24 October 2012
<b>CD 14</b>	Land between Station Road and Dudley Road, Honeybourne, Worcestershire 24 August 2012
<b>CD 15</b>	Bishops Cleeve, Tewkesbury 16 July 2012
<b>CD 16</b>	Land at Allesborough Farm, Pershore 17 May 2012
<b>CD 17</b>	Broadwater, Manor Road, Wantage Oxfordshire OX12 8DW 21 March 2012
<b>CD 18</b>	Hunston Court of Appeal Judgement
<b>Development Plan</b>	
<b>Vale of White Horse Local Plan 2011</b>	
<b>CD 19</b>	Vale of White Horse Local Plan 2011 Extracts including Local Plan 2011 maps of Eastern Vale (including Faringdon), Western Vale and Abingdon/Abingdon Town Centre
<b>CD 20</b>	Vale of White Horse Local Plan Inspectors Report (chapters 7 & 8)
<b>CD 21</b>	Government Office for the South East, Saved Policies Letter and Schedule 1st July 2009
<b>CD 22</b>	Vale of White Horse, Assessment of Saved Local Plan Policies (2011) for Consistency with the National Planning Policy Framework (2012)
<b>Local Plan 2029 Part 1 Strategic Sites and Policies February 2013</b>	
<b>CD 23</b>	Local Plan 2029 Part 1 Strategic Sites and Policies February 2013 Main Document Extracts
<b>CD 24 (a)</b>	Topic Paper 1 Duty to Cooperate and Cross Boundary Issues March 2013
<b>CD 24 (b)</b>	Topic Paper 3 Strategic Sites Selection March 2013
<b>Local Plan 2031 Part 1 Strategic Sites and Policies Housing Delivery Update February 2014</b>	
<b>CD 25</b>	Local Plan 2031 Part 1 Strategic Sites and Policies Housing Delivery update February 2014 Main Document Extracts
<b>CD 25 (a)</b>	Appendix A Development Site Templates February 2014 Extracts
<b>CD 25 (b)</b>	Supporting Paper February 2014 & Appendix 5 Site information Tables Extracts
<b>CD 25 (c)</b>	Town & Village Facilities Study (Update February 2014)
<b>Statutory Consultation Responses</b>	
<b>CD 26</b>	<b>Thames Valley Police</b> - Response 8th July 2013 requesting a financial contribution.
<b>CD 27</b>	<b>Waste Management Officer (VoWH)</b> - Response 9th July 2013 requesting a financial contribution.
<b>CD 28</b>	<b>Housing Development Officer (South Oxfordshire and VoWH)</b> - Response 10th July 2013 regarding affordable housing.
<b>CD 29</b>	<b>Oxfordshire County Council's Historic and Natural Environment Team</b> - Initial Response 12th July 2013 requesting an Archaeological Field Assessment.
<b>CD 30</b>	<b>Health &amp; Housing Officer (South Oxfordshire and VoWH)</b> - Response 17th July 2013 regarding contamination raising no objections but subject to

	conditions.
<b>CD 31</b>	<b>Health &amp; Housing Environmental Protection Team</b> - Response 18th July 2013 raising no objections but subject to conditions.
<b>CD 32</b>	<b>Health &amp; Housing Air Quality Team</b> - Response 19th July 2013 raising no objections but subject to condition.
<b>CD 33</b>	<b>Thames Water</b> - Updated Response dated 29th July 2013 confirming no objection to water infrastructure.
<b>CD 34</b>	<b>Thames Water</b> - Initial Response dated 19th July 2013 objection to Waste and Water.
<b>CD 35</b>	<b>Drainage Engineer (VoWH)</b> - Response 19th July 2013.
<b>CD 36</b>	<b>Faringdon Town Council</b> - Response 8 August 2013 - No strong Views but concerns regarding Education Places.
<b>CD 37</b>	<b>Faringdon Town Council</b> - Initial Response 22nd July 2013 objecting to the development.
<b>CD 38</b>	<b>Natural England</b> - Response dated 24th July 2013.
<b>CD 39</b>	<b>Conservation Officer (VoWH)</b> - Response 29th July 2013.
<b>CD 40</b>	<b>Countryside Officer (South Oxfordshire and VoWH)</b> - Response 26th July 2013 regarding Ecological objection.
<b>CD 41</b>	<b>Landscape Consultant (VoWH)</b> - Response 29th July 2013.
<b>CD 42</b>	<b>Environment Agency</b> - Response dated 30th July 2013.
<b>CD 43</b>	<b>Oxfordshire County Council's (One Voice) Various Teams</b> - No overall comment refer to individual responses below
<b>CD 44</b>	<b>Oxfordshire County Council's (One Voice) Transport &amp; Planning Strategy</b> - No comment refer to Transport and Development Control response at CD 45
<b>CD 45</b>	<b>Oxfordshire County Council's (One Voice) Transport Development Control</b> comments - no objection subject to conditions, legal agreement and informatives
<b>CD 46</b>	<b>Oxfordshire County Council's (One Voice) Rights of Way</b> comments - no objection subject to conditions, legal agreement and informatives
<b>CD 47</b>	<b>Oxfordshire County Council's (One Voice) Drainage</b> - no objection subject to conditions, legal agreement and informatives
<b>CD 48</b>	<b>Oxfordshire County Council's (One Voice) Archaeology</b> - Initial Holding objection subject to receipt of further information see update at CD 58 confirming no objection.
<b>Statutory Consultation Responses</b>	
<b>CD 26</b>	<b>Thames Valley Police</b> - Response 8th July 2013 requesting a financial contribution.
<b>CD 27</b>	<b>Waste Management Officer (VoWH)</b> - Response 9th July 2013 requesting a financial contribution.
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<b>CD 29</b>	<b>Oxfordshire County Council's Historic and Natural Environment Team</b> - Initial Response 12th July 2013 requesting an Archaeological Field Assessment.
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<b>CD 39</b>	<b>Conservation Officer (VoWH)</b> - Response 29th July 2013.
<b>CD 40</b>	<b>Countryside Officer (South Oxfordshire and VoWH)</b> - Response 26th July 2013 regarding Ecological objection.
<b>CD 41</b>	<b>Landscape Consultant (VoWH)</b> - Response 29th July 2013.
<b>CD 42</b>	<b>Environment Agency</b> - Response dated 30th July 2013.
<b>CD 43</b>	<b>Oxfordshire County Council's (One Voice) Various Teams</b> - No overall comment refer to individual responses below
<b>CD 44</b>	<b>Oxfordshire County Council's (One Voice) Transport &amp; Planning Strategy</b> - No comment refer to Transport and Development Control response at CD 45
<b>CD 45</b>	<b>Oxfordshire County Council's (One Voice) Transport Development Control</b> comments - no objection subject to conditions, legal agreement and informatives
<b>CD 46</b>	<b>Oxfordshire County Council's (One Voice) Rights of Way</b> comments - no objection subject to conditions, legal agreement and informatives
<b>CD 47</b>	<b>Oxfordshire County Council's (One Voice) Drainage</b> - no objection subject to conditions, legal agreement and informatives
<b>CD 48</b>	<b>Oxfordshire County Council's (One Voice) Archaeology</b> - Initial Holding objection subject to receipt of further information see update at CD 58 confirming no objection.
<b>CD 49</b>	<b>Oxfordshire County Council's (One Voice) Education</b> comments - no objection subject to conditions, legal agreement and informatives
<b>CD 50</b>	<b>Oxfordshire County Council's (One Voice) Property Team</b> comments - no objection subject to conditions, legal agreement and informatives
<b>CD 51</b>	<b>Oxfordshire County Council's (One Voice) Minerals &amp; Waste Policy</b> - no objection.
<b>CD 52</b>	<b>Oxfordshire County Council's (One Voice) Ecology</b> - Objection.
<b>CD 53</b>	<b>Oxfordshire County Council's (One Voice) - Local Member Views</b> , comments of Councillor Judith Heathcoat opposing the application.
<b>CD 54</b>	<b>The Wildlife Trusts Officer</b> - Response regarding holding objection on ecological matters.
<b>CD 55</b>	<b>Crime Prevention Design Advisor (VoWH)</b> - Response 7th August 2013.
<b>CD 56</b>	<b>Equality Officer</b> - Response undated.
<b>CD 57</b>	<b>Forestry Team (VoWH)</b> - Response 27th August 2013.
<b>CD 58</b>	<b>Oxfordshire County Council's (One Voice) Archaeology Update</b> 12 August 2013 - No objection.
<b>CD 59</b>	<b>VoWH</b> - EIA Screening Decision P13/V0653/SCR 8th May 2013
<b>CD 60</b>	<b>Landscape Architect (VoWH)</b> - Response 1st August 2013.
<b>Other Core Documents</b>	
<b>CD 61</b>	Vale of White Horse SPD - Open Space, Sport and Recreation Future Provision Adopted July 2008
<b>CD 62</b>	Vale of White Horse SPD - Residential Design Guide December 2009
<b>CD 63</b>	Vale of White Horse District Council Five Year Housing Land Supply Statement August 2013
<b>CD 64</b>	Planning Committee Report Jan 2014, Agenda Item 3, Cumulative Housing Figure Tables
<b>CD 65</b>	Faringdon Extract from SHLAA, February 2009 - Appendix 4
<b>CD 65 (a)</b>	Vale of White Horse Local Plan 2031 Part 1 -Extract from SHLAA update February 2014 - Appendix 10 Faringdon
<b>CD 66</b>	Vale of White Horse District Council Local Development Scheme 2012-2016 (Adopted Dec 2012)
<b>CD 66 (a)</b>	Vale of White Horse District Council Local Development Scheme 2014-2017
<b>CD 67</b>	Oxfordshire SHMA March 2014 - Summary Key Findings on Housing Need



<b>CD 68</b>	Transcript-Vale Community Questions on the VoWH Local Plan June 2013
<b>CD 69</b>	Gladman Representations on VoWH Local Plan 2029 Part 1 and Appendix 1 Letter 7th May 2013 regarding Oxfordshire SHMA.
<b>CD 69 (a)</b>	Gladman Representations on VoWH Local Plan 2031 Part 1 April 2014
<b>Other Planning Applications in Faringdon</b>	
<b>CD 70</b>	Fernham Fields, Faringdon - Application P13/V0139/O Officer's Report to Committee & Minutes 27 November 2013
<b>CD 71</b>	Fernham Fields Education Response 10th April 2013
<b>CD 72</b>	Land South of Park Road, Faringdon - Application P13/V0709/O Officer's Report to committee 18 December 2013
<b>CD 73</b>	Grove, Faringdon - Application P12/V0299/O Officer's Report to committee 4 December 2013
<b>Landscape and Design</b>	
<b>CD 74</b>	Vale of White Horse Planning Advisory Note - Landscape Strategy and North Vale Corallian Ridge July 2006
<b>CD 75 (a)</b>	Vale of White Horse - Extracts from Landscape Capacity Study 2014:site options
<b>CD 75 (b)</b>	Vale of White Horse Historic Landscape Information 2014
<b>CD 76</b>	The Sign of a Good Place to Live - Building for Life 12 (CABE/Design Council) 2012
<b>CD 77</b>	Extract from Oxfordshire Wildlife and Landscape Study 2004
<b>CD 78</b>	Vale of White Horse Landscape Assessment. Advice on the Landscape Impact of Future Development at Faringdon December 2008.
<b>CD 79</b>	Natural England Character Area 108 - Upper Thames Clay Vales.
<b>CD 80</b>	Landscape Institute Advice Note 01/2011. Photography and photomontage in Landscape and Visual Impact Assessment Feb 2011.
<b>CD 81</b>	Landscape Character Assessment: Guidance for England and Scotland (The Countryside Agency and Scottish Natural Heritage) 2002.
<b>CD 82</b>	Landscape Character Assessment: Guidance for England and Scotland (The Countryside Agency and Scottish Natural Heritage). Topic Paper 6: Techniques and Criteria for Judging Capacity and Sensitivity published 2002.
<b>CD 83</b>	Relevant Extracts from Guidelines for Landscape and Visual Impact Assessment Third Edition published April 2013.
<b>Drainage</b>	
<b>CD 84</b>	Section 94 Water Industry Act 1991
<b>CD 85</b>	Section 106 Water Industry Act 1991
<b>CD 86</b>	Section 112 Water Industry Act 1991
<b>CD 87</b>	Vale of White Horse Local Plan 2031- Housing Delivery Update -Infrastructure Delivery Plan Feb 2014
<b>National Planning Policy</b>	
<b>CD 88</b>	Circular 11/95 Use of Conditions in Planning Permissions - Appendix A Model Planning Conditions
<b>CD 89</b>	Regulation 122 of the Community Infrastructure Levy Regulation 2010
<b>CD 90</b>	NPPF March 2012
<b>CD 91</b>	Reference Not Used
<b>Other Recent Legal Decisions</b>	
<b>CD 92</b>	South Northamptonshire Council & SOS and Barwood Homes 10 March 2014 including Policy EV2
<b>CD 93</b>	South Northamptonshire Council & SOS and Barwood Land and Estates Ltd 13 February 2014 including Policy EV2
<b>CD 94</b>	Anita Colman v SOS, North Devon District Council, RWE Npower Renewables Ltd 9th May 2013
<b>CD 95</b>	Consent Order Gladman Developments Ltd and SOS and Cheshire East Council April 2014 including extracts of Policies PS4,PS8 and H6
<b>Additional VoWH Documents</b>	
<b>CD 96</b>	VoWH Leisure & Sports Facilities Strategy 2012-2029 - Main Report October 2012 by Nortoft

<b>CD 97</b>	VoWH Leisure & Sports Facilities Strategy 2012-2029 - Executive Summary of Draft Report for Consultation-October 2012 by Nortoft
<b>CD 98</b>	VoWH Leisure & Sports Facilities Strategy 2012-2029 - Appendix 1 Extracts from Corporate Plan and Community Strategy by Nortoft
<b>CD 99</b>	Section 38 (6) of the Planning and Compulsory Purchase Act (2004)
<b>CD 100</b>	Reference not used
<b>CD 101</b>	Natural Environment and Rural Communities Act 2006 - Chapter 16
<b>CD 102</b>	Biodiversity and Geological Conservation: Government Circular 06/2005 - 16 August 2005
<b>CD 103</b>	European Landscape Convention (Florence 2000) ELC - Link to website only
<b>CD 104</b>	Draft Faringdon Neighbourhood Plan (March 2013)
<b>CD 105</b>	West Oxfordshire Heights Conservation Target Area Advice Note
<b>CD 106</b>	Vale of White Horse Residential Design Guide (December 2009)
<b>CD 107</b>	Vale of White Horse Supplementary Planning Document - Sustainable Design and Construction (December 2009)
<b>CD 108</b>	Vale of White Horse Supplementary Planning Document - Open Space, Sport and Recreation (Adopted July 2008)
<b>CD 109</b>	Vale of White Horse Planning and Public Art - Supplementary Planning Guidance (Adopted 20 July 2006)
<b>CD 110</b>	Vale of White Horse Affordable Housing Supplementary Planning Guidance (Adopted 20 July 2006)
<b>CD 111</b>	Consultation Draft March 2013, Local Plan 2029 Part 1 Strategic Sites and Polices, Topic Paper 9 The Natural Environment
<b>CD 112</b>	Former Stratford Cattle Market Site, Alcester Road, Stratford-upon Avon Appeal Ref: APP/J3720/A/13/2205108, 7 May 2014
<b>CD 113</b>	The Hyde Estate Land at Handcross, West Sussex, APP/D3830/A/13/2198213 and 2198214, 1 May 2014
<b>CD 114</b>	Gallagher Homes Ltd, Lioncourt Homes Ltd and Solihull Metropolitan Borough Council, Case No: CO/17668/2013. Date: 30 April 2014
<b>CD 115</b>	Barratt Homes Ltd and Dwr Cymru Cyfyngedig (Welsh Water). Date: 9/12/2009
<b>CD 116</b>	Future Charges for Water and Sewerage Services -The outcome of the Periodic Review by OFWAT 28 July 1994
<b>CD 117</b>	Manual for Streets published 29 March 2007
<b>CD 118</b>	Manual for Streets 2 published 29th September 2010
<b>CD 119</b>	Banbury Road, Deddington, Oxfordshire, Appeal Decision 18 December 2013
<b>CD 120</b>	Station Road, Bourton-on-the-Water, Gloucestershire, Appeal Decision 15 January 2014
<b>CD 121</b>	Bath and North East Somerset Core Strategy Examination - Inspector's Preliminary Conclusions on Strategic Matters and Way Forward (June 2012)
<b>CD 122</b>	Todenham Road, Moreton In Marsh, Gloucestershire Appeal Decision, SoS Dismissed 12 April 2011
<b>CD 123</b>	Ox Drove & Walworth Road, Andover, Hampshire Appeal Decision, SoS Approved 30 June 2011
<b>CD 124</b>	Station Road, Long Buckby, Northamptonshire, Appeal Decision 19 October 2012
<b>CD 125</b>	Moir Road, Ashby-de-la-Zouch, North West Leicestershire, Appeal Decision 30 May 2013
<b>CD 126</b>	Ratby Road, Groby, Hinckley & Bosworth, Appeal Decision 22 January 2013
<b>CD 127</b>	Blaby, Leicestershire, The Planning Inspectorate Pre-Application Issues Report April 2014
<b>CD 128</b>	CLG & University of Glasgow - Factors Affecting Housing Build-out Rates
<b>CD 129</b>	Wainhomes v SoS High Court Decision 11 March 2013
<b>CD 130</b>	Leasowes Road & Laurels Road, Offenham, Worcestershire, Appeal Decision 7 February 2014
<b>CD 131</b>	Stratford Upon Avon and SOS and JS Bloor, Hallam and Rase, Shotton, Warwickshire, High Court Decision 18 July 2013





## Department for Communities and Local Government

### **RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT**

**These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).**

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

#### **SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;**

The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

#### **Challenges under Section 288 of the TCP Act**

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application under this section must be made within six weeks from the date of the decision.

#### **SECTION 2: AWARDS OF COSTS**

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

#### **SECTION 3: INSPECTION OF DOCUMENTS**

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the report of the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.